

LEGAL ASPECTS OF
INTERNATIONAL DRUG CONTROL

SYAMALKUMAR CHATTOPADHYAY, B.A., LL.M.

Thesis submitted to the University
of London for the degree of
Doctor of Philosophy

VOL II A PART III

University College London
Faculty of Laws

1977



PART III

"What is imperfect can never serve as a measure; though people sometimes think enough has been done and there is no need to look further."

The Republic of Plato
(Translated with Introduction and Notes by F. Cornford, Oxford, University Press, 1973, p. 214).



PART IIIIntroduction

In this Part an endeavour has been made to discuss the plans of the United Nations Organisation to suppress the illicit traffic in narcotic drugs, and the progress achieved. An attempt has also been made to show the gaps still left by the U.N.O. in its plans in this regard, and suggestions have been advanced for possible improvements, where necessary. However, before embarking upon this, it would be appropriate to look back to see the state of the international community in which the United Nations laid the foundations for achieving the above purposes.

The experiences of the League of Nations were mixed. The League directly taught us, in so far as this area of international law is concerned, to be more organised, more institutionalised and also to respond to "international awareness". It indirectly taught us how not to conclude international conventions, and about the nature of the conflict of interests among nations in trying to achieve something for the common good. What, however, the League failed to do, was to show us the way to achieve its end in this area of international law. This failure of the League prompted the nations to make a renewed attempt to devise a way successfully to suppress the illicit traffic in drugs. In order to do this, it was found necessary to create a climate of "humand understanding" and "progress".

The economic uncertainties of the 1930's were thought to be contributory to the political antagonism amongst nations which led to

the Second World War. To put it in another way, the general belief was that political security depended largely upon economic security.¹ It was also believed that not only a radical change in the economic development programmes, particularly in the underdeveloped areas, was necessary, but also that an economic depression in any part of the world was a matter of "common concern". The faith in functionalism² (i.e., that an improved method of international co-operation through international organisations would help supplant the ideas of conflicting nationalisms) was re-asserted by the nations. The initial ideas of the United Nations were influenced by the ideologies of a few powers, and consequently, it was unprepared to encounter certain problems which, in reality, would have resulted from non-participation by some nations. Moreover, it initially ignored the importance of the universal or near-universal participation of nations in order to fulfil its avowed objectives. This situation was further aggravated by the conflict of ideological concepts viz., the unitarian idea, the reformist idea and the egalitarian idea concerning the role of the United Nations in international economic co-operation, although each of these ideas was directed towards the economic progress of the world.³ The intentions of the United Nations in its early days of international co-operation were progressive, but less precise than its political intentions.⁴ Nevertheless, the importance of strengthening the bases of international co-operation by means of multilateral treaties and, in many cases, by establishing permanent international organisations, whether of limited or of universal character, was appreciated. In other words, this move of the international society

from an essentially negative code of rules of abstention to positive rules of co-operation, however fragmentary it was initially, was an evolution of immense significance for the principles and structure of international law.⁵

In as much as the control of traffic in narcotic drugs during the early period of the United Nations was concerned, the rules of international co-operation were basically identical to those of the League of Nations. Novelty, if any, in this regard, lay only in the presence of a higher quality of intention of the nations to participate in positive international co-operation. Nevertheless, the oversensitiveness of the nations in maintaining sovereignty, balanced out the ostensibly higher quality of the intentions of the nations towards international co-operation. . . . Schwarzenberger, in discussing the features of the relations between the international quasi-order of the United Nations and the contemporary international law, rightly observed that complementary " vested interests of the world Powers, middle States and non-Powers, all sovereign and equal members of the United Nations, and the operators of the institutional superstructures of contemporary world society intensify the trend not to see the wood for the trees. In near-unison, they all busy themselves in hiding these realities behind rising mountains of paper and smoke-screens of professional image-furbishing." ⁶

It is from this perspective that the success or failure of the United Nations in the field of the control of traffic in narcotic drugs will have to be examined. Successive failures do not imply

the improbability of success; on the contrary, they solidify the foundations of success in the future. Hence the relevance of any attempt to trace the emergence of success through an examination of the failures.

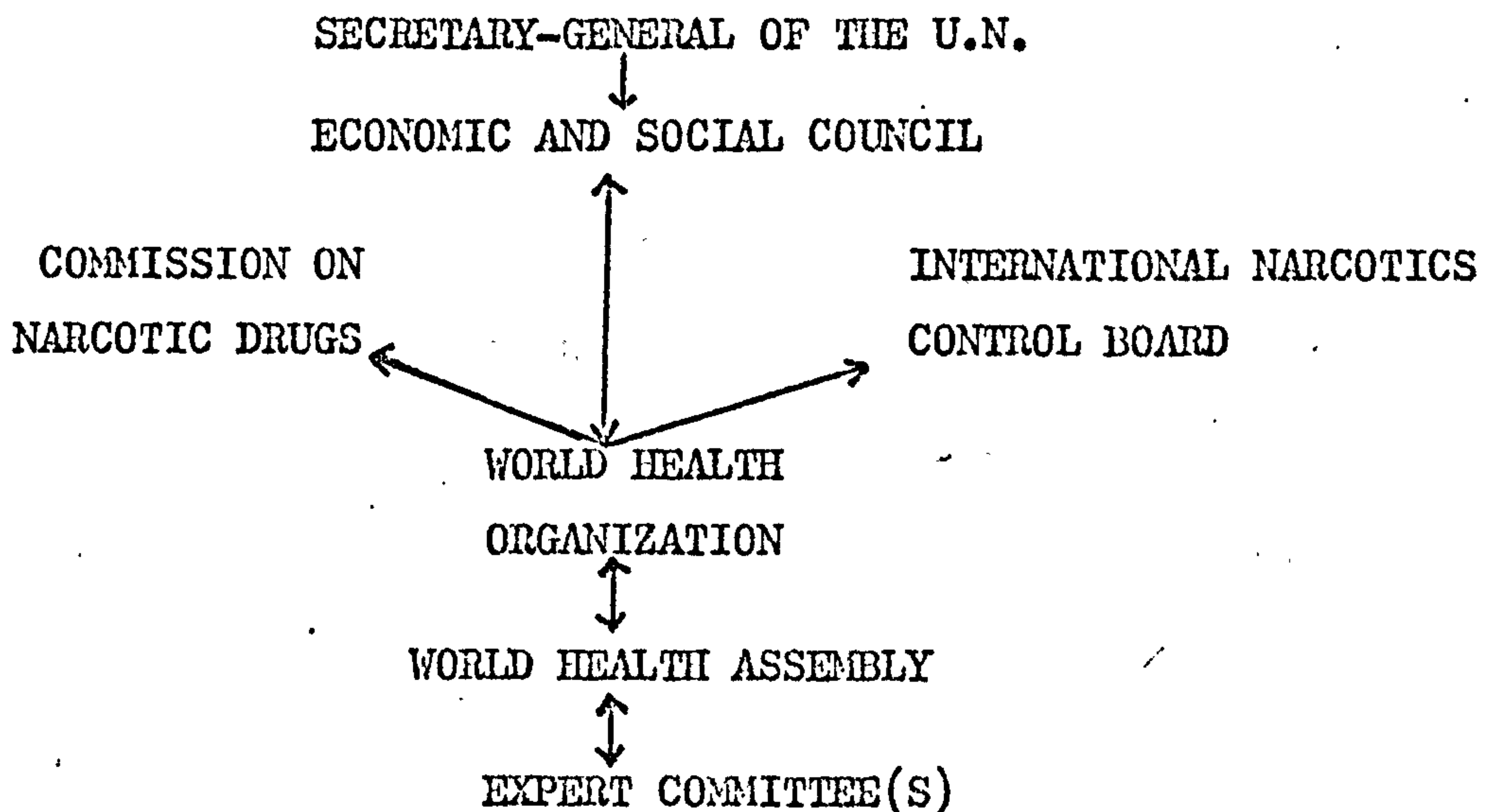
CHAPTER V

THE
ORGANISATIONAL FRAMEWORK OF THE UNITED
NATIONS IN RELATION TO THE CONTROL OF
DRUGS

By the Protocol of 1946,⁷ the governments signatory to the various narcotic treaties concluded before the Second World War, transferred to the appropriate agencies of the United Nations the power and functions exercised by the League agencies in this area of international law. The Economic and Social Council of the United Nations took over, inter alia, the functions of the League Council and the Assembly concerning control of narcotic drugs, and the Opium Advisory Committee of the League ceased to exist. At its first session in February 1946, the Economic and Social Council created the Commission on Narcotic Drugs,⁸ and entrusted it with the power and functions which were exercised by the League's Opium Advisory Committee. The Single Convention on Narcotic Drugs, 1953 (hereinafter called "the Single Convention"), abolished the Permanent Central Narcotics Board and the Supervisory Body on March 2, 1968, when the International Narcotics Control Board came into being.

The Paris Protocol of 1948, which came into force on December 1, 1949, authorised the World Health Organization to place under full international control any new drug (including synthetic drugs) which could not be placed under such control by application of the relevant provisions (Article 11) of the Limitation Convention, and which it found either to be addiction-producing or convertible into an addiction-producing drug.⁹

The working method of the organs entrusted with the task of administering the control machinery of narcotic drugs, until the coming into force of the Single Convention of 1961, was almost identical to that of the League organs concerned with this matter. It is therefore appropriate to deal with those organs which have been functioning since the coming into force of the Single Convention. Reference will however be made to notable activities of the previous organs, wherever necessary. The organs involved in the international control machinery for the suppression of the illicit traffic in drugs, under the auspices of the United Nations, may be shown by means of a diagram.



The Economic and Social Council of the United Nations

Introduction

In its resolution of 12 February, 1946 the General Assembly of the United Nations stated that it was willing " to take necessary measures to ensure the continued exercise of these functions and powers" (of a technical and non-political character conferred by certain international instruments of the League of Nations) and referred the matter to the Economic and Social Council.¹⁰ Article 62, paragraph 1 of the U.N. Charter also empowered the Economic and Social Council to make or initiate studies and reports concerning international economic, social, cultural, educational, health and related matters, and to make recommendations on these matters to the General Assembly, to the Members of the United Nations and to the specialised agencies concerned. In terms of Article 57 of the U.N. Charter, the various specialised agencies, having wide international responsibilities as defined in their basic instruments, in economic, social, cultural, educational, health and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63, i.e., at the instrumentality of the Economic and Social Council. It is in pursuance of these provisions that the World Health Organization has been brought into relationship with the United Nations.¹¹ Both the Commission on Narcotic Drugs¹² and the International Narcotics Control Board are directly responsible to the Economic and Social Council. Article 68 of the U.N. Charter has also empowered this organ of the U.N. to set up U.N. Development Programmes in various parts of the world, one of the objectives of

which programmes is to implement the policy of the U.N. on the control of the illicit traffic in narcotic drugs, in a decentralised fashion, and where such control is most needed.¹³ The Economic and Social Council has also been empowered to "make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence"¹⁴ and in practice such arrangements have been made with the International Criminal Police Organization (INTERPOL), which before its transformation into an inter-governmental organisation in 1972, was a non-governmental body. The International Criminal Police Organization is represented on the important sessions of the meetings of the Economic and Social Council, and the Commission on Narcotic Drugs also directly request it to pursue or investigate a case in which suspicion of illicit trafficking in narcotic drugs has been aroused. Of the non-governmental organisations which are directly concerned with this area of international law, mention should be made of the following:

- (a) League of Arab States;
- (b) International Federation of Women Lawyers ;
- (c) International Conference of Catholic Charities; and
- (d) World Alliance of Young Men's Christian Associations.¹⁵

Relations with non-governmental organisations are on a far more formalised basis¹⁶ than they are with the inter-governmental organisations. The importance of the services rendered by non-governmental organisations may not however be ignored.¹⁷ The power of the Economic and Social Council to create bodies, whether functional, regional or other, is unrestricted, and this seems to the abolition of any such body.¹⁸

FUNCTIONS OF THE ECONOMIC AND SOCIAL COUNCIL

The functions of the Economic and Social Council, as far as this area of international law is concerned are various.¹⁹ Article 60 of the U.N. Charter vests responsibility for the discharge of the functions of the organisation relating to international economic and social co-operation in the Economic and Social Council. The Council's functions in relation to the suppression of the illicit traffic in narcotic drugs, as enumerated in the U.N. Charter, may be divided into three categories, viz.,

- (a) functions under Article 62;
- (b) functions under Article 66; and
- (c) functions under Articles 57 and 63.

(a) Functions under Article 62 of the U.N. Charter

Under this Article the Economic and Social Council, in so far as this area of international law is concerned

- (i) may take or initiate studies and reports with respect to, inter alia, international economic, social, educational, health and related matters, and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialised agencies concerned;
- (ii) may prepare draft conventions for submission to the General Assembly with respect to matters falling within its competence; and
- (iii) may call international conferences on matters falling within

its competence, but such conferences may be called only in accordance with the rules prescribed by the United Nations, i.e., if the nature of the work necessitates the calling of such conferences and also where a U.N. organ cannot perform the work effectively and satisfactorily.

In so far as the control of illicit traffic in narcotic drugs is concerned, the Council, more often than not, initiates various studies, drafts conventions and calls conferences. The International Narcotics Control Board is required to submit annual reports to the Council. The principal purpose of the submission of such reports is to keep, amongst others,²⁰ the Council and the Commission on Narcotic Drugs, informed of the present situation of the international narcotics trade, and also of the manner in which the governments have complied with the terms of the treaties on narcotic drugs. These reports also enable the International Narcotics Control Board to portray particular trends in various aspects of the problem, and to propose remedial measures where desirable.²¹

(b) Functions under Article 66 of the U.N. Charter

In pursuance of paragraph 1 of this Article, the Economic and Social Council " shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly." Paragraph 3 of this Article also provides that it " shall perform such other functions as are specified elsewhere in the present Charter or may be assigned to it by the

General Assembly".

The provisions of paragraph 1 are very similar to those of Article 60. In view of the relationship existing between the Economic and Social Council and the General Assembly, the Council is supposed to function "in connection with the carrying out of the recommendations of the General Assembly". However, the phrase, "as fall within its competence" in paragraph 1 is a restraint upon paragraph 3. It would be appropriate to interpret paragraph 3 in conjunction with Article 60 of the U.N. Charter.²² This argument may further be strengthened by reference to the provisions of Article 66, paragraph 2. In its Resolution of December 15, 1946, the General Assembly recommended the Economic and Social Council to study the question of effective ways and means of submitting expert economic, social and cultural advice to Member countries, especially underdeveloped ones which might desire it, and the Council, in turn, decided to instruct the Secretary-General to establish machinery within the Secretariat in order to further this programme.²³

In so far as the control of trade and traffic in narcotic drugs is concerned, the Council has, in consultation with the Commission on Narcotic Drugs, given assistance, financial or otherwise, e.g. expert advice, elaboration of plans and programmes for the most effective utilisation of personnel, facilities and resources to various Member States.²⁴ In addition to its programmes of technical assistance, the United Nations Development Programmes which were designed and made operative with a view, inter alia, to fighting the evil of drug-abuse, deserve commendation.²⁵ The local United Nations Development Programme authorities have been made accountable to the Council, and consequently,

the Council retains the right to review such programmes, if necessary.

(c) Functions under Articles 57 and 63 of the
U.N. Charter

One of the functions of the Economic and Social Council is to co-ordinate the work of the various specialised agencies and to bring these agencies into relationship with the United Nations. Such relationship is to be established only by inter-governmental agreements concluded under Articles 57 and 63 of the U.N. Charter.²⁶ In so far as the international action for narcotic drugs is concerned, such treaties are numerous, and the agencies which have been brought into relationship with the United Nations are various in kind.²⁷ The system of reciprocal representation at each other's meetings (without a right to vote) and/or recognition of reciprocal rights to propose agenda items, after necessary consultation, to the appropriate organ, are means of co-ordinating the work of the specialised agencies.²⁸ The practice of "linking membership" between the World Health Organization and the U.N. does clearly help co-ordinate the work between these two institutions.²⁹ By making most of the organs, including the Commission on Narcotic Drugs, accountable to the Economic and Social Council, the prospects of co-ordination of work with the said Commission have been more manifest. The Commission on Narcotic Drugs being a functional commission of the Economic and Social Council, its economic viability depends upon the General Fund of the United Nations. The allocation of such funds is to be approved by the Council before being finally authorised by the General Assembly of the United Nations.³⁰

On the other hand, the World Health Organization, which is closely connected with the work of the Commission on Narcotic Drugs, is, strictly speaking, a technical body, and consequently, the functional independence of this body needs to be maintained. The basis of co-operation in this respect is mutuality and understanding. In so far as technical legislation and management of their own affairs are concerned, the separate identities of such specialised agencies are to be recognised.³¹ The Commission on Narcotic Drugs also being a specialised body, the nature of the functions which the Economic and Social Council performs in relation to this body, in many cases, be deemed to be supervisory in character.

However, co-operation by means of international agreements is of paramount importance, since these agreements define the legal framework within which the co-ordinating function is performed. Without such agreements the various specialised agencies would technically be free to pursue their own independent ways subject only to their own constitutional instruments.³² In co-ordinating, the Economic and Social Council does not command obedience; consultation and recommendations are the means of fulfilling this task. It is for this reason that the Technical Committee at the San Francisco Conference emphasised that its purpose was "to provide for agreements sufficiently flexible to enable satisfactory arrangements to be worked out on the basis of need and experience."³³

(d) Comments:

The U.N. Charter has not conferred any legislative power upon the Economic and Social Council, which would bind the Member States, and consequently, the Council has become a forum of discussions only, from which recommendations ensue.³⁴ The scope of work of this Council is too wide, and like all other functionally horizontal organisations, it is likely that this organ will work with decreasing effect. In reality, many specialised bodies, and even a body in direct relationship with the Council (e.g. The Commission on Narcotic Drugs) may gradually assume more effective power in their respective spheres than the Council itself.³⁵ The operative language of resolutions serves as a general indicator of their binding effect (e.g. welcomes, endorses, approves, invites, requests etc.). Most of the recommendations of the Economic and Social Council are based on consensus,³⁶ although the absence of such consensus becomes in certain instances explicit.³⁷ The effort to arrive at a consensus not infrequently leads to watered-down, platitudinous, or ambivalent decisions.³⁸ Yet, on the inter-governmental level, the Economic and Social Council is the primary organ of overall review and harmonization.³⁹ The increasing strength of the subordinate bodies, in relation to their creator should not be a matter of concern, as the primary purpose is not to create a large unwieldy body, but to achieve its goal through effective delegated bodies. Since they are delegated bodies, they are, ipso facto, required to maintain relationship with the main organ, even though they may be allowed to function independently in their own spheres.⁴⁰ Yet, decisions affecting subsidiary bodies of the Council itself, typically take the form of directives to

undertake new programmes, to modify existing programme priorities, or, at times, to discontinue or defer specific operational projects. This is particularly true of regional economic commission activities. As the parent body, the Council enjoys direct supervisory authority over such bodies, whether regional or central- which of course does not hold for the specialized agencies.⁴¹

In so far as the inter-governmental organisations (e.g. INTERPOL or the League of Arab States) are concerned, the Economic and Social Council maintains relationship with them on an informal basis. It allows participation by representatives of such organisations for exchanging ideas, and indeed, there are arrangements for reciprocal participation with various inter-governmental organisations. The International Criminal Police Organisation (INTERPOL), since its becoming an inter-governmental organisation, has established a closer relationship with the Commission on Narcotic Drugs by being promoted from its status as an observer to that of a participant with a right to vote.

Relations with non-governmental organisations (NGOs) are on a far more formalised plan.⁴² Article 71 of the U.N. Charter authorises the Economic and Social Council to make " suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence." The NGOs enjoy a consultative status. In practice, the Council has categorised them under three categories. Category A comprises those NGOs which have a basic interest in most of the activities of the Council; in category B are those which have special competence in certain of the aspects of the Council's activities, while in category C are included certain organisations of

an ad hoc nature. In no case does an NGO have rights comparable to states under Article 69 or specialised agencies under Article 70 of the U.N. Charter; the difference between "participation" and "consultation" is fundamental.⁴³ Although all these NGOs send observers to the public meetings of the Economic and Social Council and its commissions, those in categories A and B also submit written statements for circulations among the members of the Council, while those in category A may also make oral statements and propose agenda items. An NGO's contributions become more concrete and effective when its views are specially invited; it is in this sense that the ad hoc NGOs, in the opinion of the author, receive no less recognition than those in categories A and B.

However, in its resolution 288(X) of 27 February 1950, the Economic and Social Council reviewed the consultative arrangements with non-governmental organisations, and indeed, having regard to Article 71 of the U.N. Charter and recognising that consultation with such organisations provide an important means of ensuring the fulfilment of peoples' continuing interest in the policies and operations of the United Nations, and considering that consultation between the Council and its subsidiary organs and the non-governmental organisations should be developed to the fullest practicable extent, approved certain revised arrangements for consultation, e.g. principles to be applied in the establishment of consultative relations, principles governing the nature of the consultative arrangements and the establishment of consultative relationships etc.

In so far as the control of trade and traffic in narcotic drugs is concerned, the following non-governmental organisations participated in the U.N. Conference for the Adoption of a Single Convention on Narcotic Drugs:

- (a) International Federation of Women Lawyers;
- (b) International Conference of Catholic Charities; and
- (c) World Alliance of Young Men's Christian Associations.⁴⁴

All these organisations came under category B, i.e., these organisations have a special competence in, and are concerned specifically with, only a few of the fields of activity covered by the Council. The Council has also authorised a committee on non-governmental organisations to review from time to time the list of non-governmental organisations included in categories A and B,⁴⁵ and indeed, the exercise of such an authority by the Council is declaratory of its intention to establish such effective relationship with the non-governmental organisations as would be relevant to a particular matter of international concern.⁴⁶ Such a relationship negates all elements of competitive status, and/or hierarchy; it is based on partnership and mutual understanding.

THE COMMISSION ON NARCOTIC DRUGS

(a) Introduction

At its first session, in February 1946, the Economic and Social Council established the Commission on Narcotic Drugs (hereinafter called " the Commission") in order to provide machinery whereby full effect might be given to the international conventions relating to narcotic drugs, and to provide for continuous review of the progress towards international control of such drugs. This Commission has also been established to:

- (a) " Assist the Council in exercising such powers of supervision over the application of international conventions and agreements dealing with narcotic drugs as may be assumed by or conferred on the Council" ;
- (b) " Advise the Council on all matters pertaining to the control of narcotic drugs, and prepare such draft international conventions as may be necessary" ;
- (c) " Consider what changes may be required in the existing machinery for the international control of narcotic drugs and submit proposals thereon to the Council"; and
- (d) " Perform such functions relating to narcotic drugs as the Council may direct".⁴⁷

Although constituted under the auspices of the United Nations, the Commission was , in effect, the successor of the Opium Advisory Committee of the League. One of the purposes of establishing this

Commission , at least initially, was to "carry out such functions entrusted to the League of Nations Advisory Committee on Traffic in Opium and Other Dangerous Drugs by the international conventions on narcotic drugs as the Council may find it necessary to assume and continue." ⁴⁸ This Commission was not, therefore, developed ex nihilo, and the continuity was not only that of men ⁴⁹ and problems but also of solutions. ⁵⁰ The establishment of a body like the Commission on Narcotic Drugs was being contemplated by the General Assembly of the United Nations, even before the formal cession of the League of Nations, with a view to taking " necessary measures to ensure the continued exercise" of the functions of the League in this area of international law.

(b) Composition of the Commission

At its first session, in February 1946, the Economic and Social Council requested the following governments to designate one representative each to constitute the Commission: Canada, China, Egypt, France, India, Iran, Mexico, the Netherlands, Peru, Poland, Turkey, U.K., U.S.A., U.S.S.R. and Yugoslavia. The criteria which it had been decided to apply in the selection of members of this Commission, were that they would not only be Members of the United Nations, but also " important producing or manufacturing countries in which illicit traffic in narcotic drugs constitutes a serious social problem." ⁵¹ Therefore, geographic distribution was not necessarily taken into account in the membership of the Commission. Although the term of office of the representatives was initially fixed at three years, with

a provision for re-appointment, the principle of permanent membership of the important countries was adopted at the eighth session of the Economic and Social Council. The considerations which led to the adoption of such a principle were:

- (a) "... the necessity of ensuring the continuity of the functioning of the Commission itself and of its officers";
- (b) "... the special interest in the international control of narcotic drugs by the principal drug-producing and manufacturing countries and those countries in which illicit traffic in narcotic drugs constitutes a serious problem"; and
- (c) "... the importance of the co-operation of all nations in this humanitarian effort."

It was also decided that the Commission would be composed of fifteen members of the United Nations and that such members must be important "producing" or "manufacturing" countries, or countries in which illicit traffic in narcotic drugs constitutes a serious social problem. It may be observed in this connection that membership of the Commission was linked with membership of the United Nations. Thus, the non-members of the United Nations, some of which are "important producing or manufacturing countries" or non-member countries in which "illicit traffic in narcotic drugs constitutes a serious social problem" have been excluded from membership of the Commission. This was done perhaps because of the fact that the Commission is only a subordinate body of the Economic and Social Council. At the time the Commission was established, the following countries, who were members of the

Opium Advisory Committee of the League, but not of the League were, therefore, excluded from membership of the Commission.⁵²

Belgium	Hungary	Switzerland
Bulgaria	Portugal	Thailand
Greece	Spain	Uruguay

It may be observed that, for obvious reasons, the criteria of membership of the Commission should have been drafted in the following way: "Members of the United Nations which are important drug producing or drug manufacturing countries, and/or countries in which illicit traffic in narcotic drugs constitutes a serious social problem."⁵³ However, at its thirty-second session in 1961, the Economic and Social Council not only decided to increase the Commission's membership to twentyone, but also revised the conditions of its membership by stating that its members were to be "elected from among the members of the United Nations and of the specialised agencies and the parties to the Single Convention on Narcotic Drugs, 1961; that the members should be elected with due regard to the adequate representation of countries which are important producers of opium or coca leaves, of countries which are important in the field of the manufacture of narcotic drugs and of countries in which drug addiction or the illicit traffic in narcotic drugs constitutes an important problem."⁵⁴ Such revised conditions of membership obviously offered the opportunity of membership of the Commission to the non-members of the United Nations, and also to those countries which are members of specialised agency / agencies only.⁵⁵ Thus, in so far as membership is concerned, such conditions have been designed to maintain parity with the specialised agencies of the U.N.⁵⁶

The phrase "adequate representation of countries which are producers of opium ..." in the resolution, implied that for the formulation of an effective international policy a wide range of participation of the countries concerned was necessary. The latter resolution, however, emphasised that membership of the Commission should be open to those countries in which "drug addiction or the illicit traffic in narcotic drugs constitutes an important problem."⁵⁷ This latter resolution also confirmed that the members of the Commission should also be representatives of governments.⁵⁸ The necessary consequences of such a provision are twofold, viz.

- (a) the Commission would be constituted of those persons most suitable to represent the problems of the countries concerned and/or the Commission would be enabled to derive the benefit of the knowledge and service of persons who, according to the government of the country concerned, are best qualified for such a purpose; and
- (b) the protection of the interest of the country concerned through a representative whom his government deems most suitable for the purpose.

However, unlike the procedure applicable to all other functional commissions of the Economic and Social Council, appointment of the delegates of the Commission need not be approved either by the Secretary-General of the U.N. or by the Economic and Social Council.⁵⁹ This practice clearly evidences that, since it is an institution composed of representatives of governments, the ultimate authority of selection of its members should lie with the governments concerned. This will

also indirectly make the governments more responsible in the discharge of their functions in this regard.

It is to be noted, however, that the Single Convention has not made any provision concerning the composition of the Commission. In Article 5 of the Convention, the Parties recognising the competence of the United Nations with respect to the international control of drugs, agreed to entrust to the Commission and to the International Narcotics Control Board, the functions respectively assigned to them under this Convention. The authority to set up such a Commission may also be found in Article 68 of the U.N. Charter which states that the "Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions." Rule 24 of the Rules of Procedure of the Economic and Social Council provides that "the Council may establish and define the composition and the terms of reference of:

- (a) Functional Commissions and regional commissions;
- (b) Sessional Committees of the whole and other sessional bodies; and
- (c) Standing and ad hoc committees." 60

It can also change the composition of the Commission on Narcotic Drugs or can even constitute this Commission partially or fully of experts chosen in their individual capacity. At present, the number of members of the Commission is thirty. It may also be stated that since it is a treaty-body, its viability is dependent upon the length of life of the treaty concerned, i.e., the Single Convention.

Functions of the Commission

According to its terms of reference,⁶¹ which constitute the basis of its action, the Commission on Narcotic Drugs is required to perform:

1. functions emanating from the narcotic treaties;
2. functions imposed upon it by the Economic and Social Council in virtue of Article 62 of the U.N. Charter; and
3. functions emanating from the Rules of Procedure of the Functional Commissions of the Economic and Social Council.⁶²

1. Functions emanating from the narcotic treaties
 - A. Functions emanating from the conventions and protocols prior to the Single Convention on Narcotic Drugs, 1961.

The Protocols which preceded the Single Convention were the Paris Protocol of 1948⁶³ and the 1953 Protocol.⁶⁴ With the march of medical science, inter alia, in the manufacture of analgesic components, the scope of the pre-War narcotic treaties was generally found to be inadequate. The growing number of dependence-producing drugs which had been made synthetically were not derivatives of the opium poppy, coca bush and cannabis plant, nor did they belong to the chemical groups defined under the Limitation Convention. At its first session in December 1946, the Commission proposed a study of the procedure necessary for bringing the new synthetically produced drugs (which were outside the scope of the Limitation Convention) under full international control. This study culminated in the conclusion

of the Paris Protocol of 1948, which came into force on December 1, 1949.

In terms of Article 1 of this Protocol, if any state Party to the Protocol considered that a drug which was or might be used for medical or scientific purposes, and to which the Limitation Convention did not apply, was liable to the same kind of abuse and productive of the same harmful effects as the drugs specified in Article 1, paragraph 2 of the said Convention, that state should send a notification to that effect to the Secretary-General. The Secretary-General in turn, was required to transmit that information immediately, to among others concerned,⁶⁵ the Commission on Narcotic Drugs. Although the final decision or finding on the drug in question, i.e., whether it is capable of producing addiction or of conversion into a product capable of producing addiction was to have come from the World Health Organization, the Commission, in terms of Article 2 of this Protocol, was authorised upon receipt of the notification from the Secretary-General in accordance with Article 1, paragraph 1 of this Protocol, to consider as soon as possible whether the measures applicable to drugs specified in Article 1, paragraph 2, group I of the Limitation Convention should provisionally apply to the drug in question, pending receipt of the decision or finding of the World Health Organization. The power of decision as to whether any measure should apply provisionally to any particular drug, lay with the Commission, and it was required to communicate this decision to the World Health Organization, the Permanent Central Board and the states Parties to this Protocol through the Secretary-General

of the U.N. This indirectly proves that the Commission kept itself alert to the probable loopholes in the control system. In order to close the gap caused by the time-lag between the time when a government became aware of the existence of an addiction-producing drug and the time of the international organ's taking action, the Commission urged the manufacturing countries to co-operate by promoting the implementation of the international control procedure as promptly as possible. The Economic and Social Council confirmed this policy of the Commission by adopting a resolution ⁶⁶ in which it urged the governments to take action for bringing new drugs under effective control in that :

- (i) the government of a country in which it had been produced should provisionally subject a new drug, if it was thought to be potentially dangerous, to the control measures prescribed by the international conventions pending the decision of the World Health Organization;
- (ii) all governments should apply provisional measures of control to a drug of which a notification had been made by a government to the Secretary-General in accordance with the Paris Protocol; and
- (iii) should apply the necessary measures of control, as a matter of urgency as and when they received the communication of a finding of the World Health Organization or a decision of the Commission for provisional measures of control relating to a drug.

In so far as the 1953 Protocol was concerned, Article 10, paragraph 1, sub-paragraph (c) authorised the Commission to prescribe the form for the annual reports on the working of the Protocol, which the Parties were required to submit to the Secretary-General. In addition to this, the Commission was also authorised to perform certain functions which had been prescribed by the Limitation Convention, viz.,

- (a) appointment of a member of the Supervisory Body
(Article 5, paragraph 6);
- (b) appointment of one member of the body of experts
competent to deal with the regime of a drug, i.e.,
whether or not a drug is capable of producing addiction or is convertible into a drug capable of producing addiction (Article 11, paragraph 4) ; and
- (c) the drawing up of a form for the annual reports
which governments were required to communicate to
one another through the Secretary-General on the
working of the Limitation Convention (Article 21) .

Although the Commission's treaty-functions have been more elaborate since the coming into force of the Single Convention,⁶⁷ its functions, by implication, prior to the Single Convention included not only seeking the co-operation of states, but also the maintenance of relationship with various international bodies.⁶⁸ It performed such functions by inviting observers from various governments to attend its meetings, by requesting governments to furnish information through questionnaires devised by it,⁶⁹ by making special studies (as it did on cannabis) and even by inviting comments on draft

conventions.⁷⁰ Although the Commission had maintained contacts regularly with various special bodies concerned with narcotics, viz., W.H.O., F.A.O., INTERPOL etc.,⁷¹ it was the Permanent Central Opium Board and the Supervisory Body with which it maintained closest contact for practical reasons.⁷²

The functions of the Commission during this period were varied. It not only covered areas like the abolition of opium-smoking, limitation of the production and manufacture of drugs, implementation of the existing system, suppression of the illicit traffic in drugs, and research/study of the narcotics problem including drug-addiction, but also devised schemes for future improvement.⁷³ Most of these functions were inherited by the Commission from the League system. Nevertheless, during the War the international control system of narcotics was distorted. The activities of the Permanent Central Board and the Supervisory Body became only nominal and in certain cases the control system broke down owing to lack of communication with the international organs, while in other cases, war itself complicated the system, through the surplus stocks held by the armed forces.⁷⁴ When the Commission was established, one of its foremost tasks was to re-establish the international control system at the pre-War level and also to re-equip the national governments for their proper functioning by means of collaboration and fulfilment of their treaty obligations.⁷⁵ The Commission passed a resolution requesting the Economic and Social Council to urge the governments of France, U.K., U.S.A., and U.S.S.R. to recommend to the allied authorities concerned with the control of narcotics that

they should take appropriate measures for establishing an effective control system in Germany.⁷⁶ As the situation of narcotics control in certain countries, e.g. Japan, prior to the conclusion of the Peace Treaties with her, became alarming, a resolution was passed by the Economic and Social Council in which it requested the governments concerned to negotiate such treaties as would produce effective measures in this respect ; and such control was to be under the supervision of the United Nations or such other body as the Peace Treaties would establish.⁷⁷ The Commission acted as a watch-dog on the Japanese and German situations until the incidence of the illicit traffic in drugs arising out of the military stocks in these countries had been reduced to a satisfactory level. Although the Commission's work at least for the first few years was mostly concerned with repairing the damage caused by the War to the international narcotics control system, its work may be detailed under the following headings:

(a) Suppression of opium-smoking

Despite all efforts to suppress opium-smoking since the conclusion of the Hague Opium Convention of 1912 the progress in this direction was rather slow,⁷⁸ and the situation was further aggravated by the lack of proper control during World War II. The initiative towards suppression of opium-smoking came from the stronger powers like France, the Netherlands, U.K., and U.S.A. The initial attempt to suppress this evil was made in those territories of the Far East which had been under the Japanese control. The

Commission appreciated the situation and at its first session adopted a resolution in which it requested the Economic and Social Council to take appropriate steps for the prohibition of manufacture and internal traffic in opium in those countries in which opium-smoking was still considered legal. Since then the Commission has not only reviewed the progress made in the policy of the suppression of opium-smoking, but also adopted numerous resolutions recommending to the Economic and Social Council, various measures for the suppression of this evil.⁷⁹

(b) Implementation of the Existing System of Control

The Commission, at its birth, found itself in the midst of a system of control which had existed over a period of years. The drug conventions concluded during the League period had been accepted, at least theoretically, by many nations. The Commission's initial task was, therefore, to implement and strengthen the control system envisaged by various treaties in this matter, instead of disturbing the existing system. The duty of implementation and strengthening of the control system required the Commission to perform various functions which had been detailed by the Council in its resolution of 18 February, 1946.⁸⁰ Such functions, apart from advising and assisting the Council (i.e., the Economic and Social Council), included the examination of various matters viz., the reports received from governments,⁸¹ their national laws and regulations, summary of annual reports of governments,⁸² list of drugs under international control,

names and addresses of national manufacturers of drugs, the purpose of producing such drugs (i.e., whether for medicinal use or for export), the effectiveness of import certificates and export authorisations, reports on illicit traffic during a year, in order to consider if any changes would be required in the existing machinery of control in any country and in the machinery for the international control of drugs at large and in the latter case, the submission of proposals thereon to the Council. The Commission was also required to consider the questions of drug addiction and necessary research thereon. It also considered the reports of the Permanent Central Opium Board, of the W.H.O. Expert Committee on Addiction Producing Drugs.⁸³ Its functions were not merely supervisory since it was authorised to ask for explanations from a country on a matter relating to narcotic drugs, if necessary. In the case of an unsatisfactory situation, it also adopted a resolution to request the Secretary-General to ask for an explanation from the country concerned. The Secretary-General issued directives on the basis of these resolutions, and they produced direct effects in that they made the defaulting nations submit their annual reports. These annual reports were essential for the Commission to enable it not only to examine the varying situations in different countries, but also to prepare the Summary of Annual Reports Relating to Opium and Other Dangerous Drugs.

The success of the Commission's functions depended primarily upon the co-operation of the countries. It was for this reason that the Commission preferred to adopt a friendly attitude towards the countries in performing its functions instead of creating a situation which would have strained their relationship.

The other treaty-function of the Commission was to make an analytical survey of national laws concerning drugs. In accordance with Article 21 of the Limitation Convention, the High Contracting Parties were required to "communicate to one another through the Secretary-General of the League of Nations the laws and regulations promulgated in order to give effect to the present convention", and they were also required to forward to the Secretary-General "an annual report on the working of the Convention in their territories". It was the Commission's function to examine these laws, and advance suggestions to the national governments concerned to amend or improve the laws as necessary.⁸⁴ In implementing the treaty-functions the Commission had also to examine the legality of carrying narcotic drugs in the first aid kits of aircrafts. The quantity of drugs carried in such kits had not the blessing of any government either by way of import certificate or by way of export authorisation. In other words, these drugs were beyond the scope of international control. In fact, this question was brought to the attention of the Commission by the International Civil Aviation Organization. The Secretary-General, in co-operation with the World Health Organization, the International Civil Aviation Organization and the International Criminal Police Organization, recommended certain requirements in this regard. The Commission, however, in view of the special nature of the problem, adopted a resolution in which it recommended to the Economic and Social Council a system which would "harmonize the need to provide control measures against the possibility of abuse or theft of the narcotic drugs carried and the need to interfere as little as possible with the expeditious handling of aircraft on the ground."⁸⁵ This problem was subsequently dealt with in detail in the Single Convention.⁸⁶

(c) Limitation of the Production of Raw Materials

The International Opium Convention of 1925 imposed a general obligation upon the Contracting Parties to enact laws and regulations with a view to controlling effectively the production, distribution and export of raw opium only. This Convention did not impose any such obligation upon the Contracting Parties in respect of coca leaf and cannabis. These gaps in the treaties were not due to the authors of the treaties overlooking the problem, but because it was more difficult to subject agricultural than manufacturing processes to close control.⁸⁷ By nature, both coca bush and cannabis grow wild and it is difficult to prevent their growth. With this should also be taken into account the domestic use of these plants (i.e., for the purpose of cooking) and the ignorance of many farmers as to their narcotic potentialities. The question of control of the production of raw materials, which had not been brought under control by the International Opium Convention of 1925, was already under contemplation by the League. The War intervened, but the initiative taken by the government of the United States was indomitable. The process of persuading countries continued and in 1947 the Economic and Social Council adopted a resolution to this effect.⁸⁸

The Commission, having appreciated the difficulties involved in the conclusion of a general convention restricting the production of raw materials, suggested to the Secretary-General that some interim measures in this regard would be more appropriate. The Commission also requested the Secretary-General to initiate studies and inquiries for this purpose. Consequently, an ad hoc committee and a joint committee consisting of producers and manufacturers met at Geneva in August, 1950,

to consider the feasibility of setting up of a system of national monopoly (which would imply setting up a system of control for national production under government supervision), and international monopoly for trade in opium. The failure of the joint committee to come an agreement on the question of national or international monopoly prompted the Commission to consider the possibilities of signing a protocol with a view to limiting the production of opium,⁸⁹ and it requested such of the Council. The Council adopted that resoltuion at its thirteenth session.⁹⁰ It was at the initiative of the Commission that in 1953 the conference for adopting the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of International and Wholesale Trade in and Use of Opium⁹¹ was convened. This Protocol was drawn up by the Secretary-General in accordance with the principles suggested by the Commission at its sixth session. This evidently proved that the Commission was not only engaged, inter alia, in considering the various aspects of control measures, national and/or international, but also contributed positively to the formation of an international policy in this regard. It was also a function of the Commission to keep the protocols and convention concerned with drug under constant review, and where necessary, to request the non-signatory states to sign such documents.⁹² The Commission's function was not only that of a watch-dog but also of a policy-maker, direct or indirect.

(d). Limitation on Manufacture of Drugs

The Commission's function in this regard was implied in Article 20 of the Limitation Convention. According to this Article, the Parties to the Convention were required to submit lists containing the names and addresses of the firms that had been authorised to manufacture drugs in their respective territories. It was the function of the Commission to study those lists, and on examining the changes in the situation of manufacture of and trade in drugs, to advance opinions. This aspect of the function of the Commission necessarily entailed an examination of the lists of the national governments who were authorised to issue import certificates and export authorisations. Since these lists were of vital importance to the Commission, for the publication of a comprehensive list indicating both these aspects, the Commission impressed on the national governments the necessity of furnishing accurate information regularly. The Commission, in case of doubt, used to verify the accuracy of such figures. It was also in the discharge of its functions assisted by sub-committees and/or the Secretariat in the preparation of a List of drugs under international control.⁹³ But it was the function of the Commission to study this list and to advance suggestions for possible improvements, where necessary. One of the suggestions which was decided to be advanced by the Commission at its eighth session, to the Secretary-General, was that such a list should show the synonyms which were used by various countries for the scientific names of basic drugs.⁹⁴ The effectiveness of the limitation upon the manufacture of drugs was linked with the question of identification of drugs. It was for this reason that the Commission, at its fourth session, discussed

the desirability of giving a single name to each habit-forming drug. The Commission's idea received full support from the Expert Committee on Addiction Producing Drugs of the World Health Organization, when it adopted a resolution to this effect.⁹⁵ Although no action in this regard was taken immediately, owing to the fact that such a system would prove to be difficult for the enforcement officers to implement and that such a system alone would not be sufficient to limit the illicit manufacture of and traffic in drugs, it suggested some other provisions,⁹⁶ which ultimately laid the foundation of Article 30, Paragraph 4 of the Single Convention of 1961, which stated that if a " Party considers such measure necessary or desirable, it shall require that the inner package containing a drug or wrapping thereof should bear a clearly visible double red band. The exterior wrapping of the package in which such drug is contained should not bear a double red band. "

(e) Suppression of Illicit Traffic

It is important to emphasise that by the time the Commission came into being, the provisions which had been made by several multilateral drug conventions were not inadequate as regards regulating the "licit" trade in drugs is concomitant with the number of "illicit" sources of supply. In fact, after World War II,

such sources of supply multiplied enormously, for various reasons viz. rapid industrialisation in those parts of the world where raw materials were produced, growth of illicit trafficking by gangs as quick money-making venture, and the socio-economic changes which the post-war international society experienced. Added to this there must be taken into account the characteristics of each kind of drug, e.g. opium, coca leaf, cannabis and synthetic drugs, which determine the method of traffic.⁹⁷

(i) Collection of Information Concerning Illicit Traffic in Drugs

Any successful attempt to suppress the illicit traffic in drugs involves, inter alia, knowledge of the sources of traffic, regulation of supply according to demand, thus closing the door to illicit trade, active participation of states by supplying information to the international body concerned, and willingness to co-operate and also to educate the general population especially about the ill effects of drugs.

In Article 23 of the Limitation Convention the High Contracting Parties undertook to "communicate to each other, through the Secretary-General of the United Nations, as soon as possible, particulars of each case of illicit traffic discovered by them which may be of importance either because of the quantities involved or because of the light thrown on the sources from which drugs are obtained for the illicit traffic or the methods employed by."

illicit traffickers."⁹⁸ These provisions generated some functions for the Commission, foremost being to devise a system which would generate the required kinds of information in this matter. The Commission therefore devised the forms, providing for the collection of this information, and emphasised through the Council's resolution the necessity of furnishing accurate information regularly and compulsorily. Because of the indispensability of such information, the Commission encouraged the participation of observers from those countries which were not its members but which had been experiencing drug problems. The Commission established liaison with the International Criminal Police Organization⁹⁹ not only for its report on the current state of illicit traffic in drugs, but also for other related matters. The Secretary-General, in preparing the review of the illicit traffic in drugs, was assisted by the Commission. The Commission's function was not confined to studying the drug situation¹⁰⁰ in general, but extended even to analysing the problem drug by drug, and country by country.

(ii) Action Against Illicit Trade

Action against illicit trade presupposes action against illicit supply. Any action against illicit supply is dependent on determination of the origin of the drugs, i.e., the

place of production and/or manufacture of the drugs. The Commission emphasised that a simple, and rapid and easily reproducible method of determination of the origin of drugs would be necessary, especially in view of the fact that such a method should be able easily to be carried out in any laboratory in the world. Since illicit traffic in opium was very high, it was decided that the first test of determination of the origin of a drug should be carried out on opium. The Economic and Social Council by its resolutions in 1948¹⁰¹ and 1952¹⁰² invited the governments of all opium-producing countries to co-operate in such a programme, and required them to supply samples of their own products and of those which found their way into illicit traffic, in order that research could be carried out. This step was augmented by a resolution¹⁰³ by the General Assembly of the United Nations, in which it was decided to establish a laboratory as part of the Division of Narcotic Drugs. Unfortunately, owing to the difference in methods for the determination of the origin of opium, suggested by various authorities, nothing concrete was achieved until 1958, when it was affirmed that the method which had been suggested and emphasised¹⁰⁴ by the Commission would be the best method.¹⁰⁵ The Commission's suggestion as to the determination of the origin of drugs extended to manufactured narcotic drugs¹⁰⁶ and cannabis also.

The Commission, as a part of its programme to fight against illicit traffic in narcotic drugs, took action to control the supply of such drugs also. The Commission's persistent efforts to control the supply of opium resulted in the conclusion of the 1953 Protocol.¹⁰⁷ Provisions for the control of the supply of coca leaf and cannabis have also been made in the Single Convention.¹⁰⁸ In this case also, an attempt was made to restrict the supply at the root. The main opium-producing countries are India and Turkey. As far as illicit production and supply were concerned, both the countries responded well to the call of the United Nations (which was initiated by the Commission.) In both countries,¹⁰⁹ the opium situation is administered by national opium agencies.

Any measure of effective control over illicit supply and illicit trade in general, is fraught with difficulties.¹¹⁰ The Commission, appreciating the difficulties, e.g. socio-economic conditions prevailing in a country or lack of knowledge as to the abuse of drugs etc., recommended to the Economic and Social Council that the governments should not only restrict the number of manufacturing firms to a minimum, but also make arrangements for exchanging information on their control methods.¹¹¹ As a direct measure against illicit trade in narcotic drugs, the Commission was not only requested the

Secretary-General, through the Economic and Social Council, to compile a list of personnel of merchant vessels who had been convicted of smuggling drugs, but also suggested to him that he should send that list to the governments with a request to take all possible measures to prevent any activity culminating in illicit traffic in drugs.¹¹² The Commission recommended all governments to take all possible measures to keep aircraft from use by traffickers in drugs. The Commission, of course, pursued the other policies concerning suppression of the illicit traffic which were included in the International Opium Convention of 1925 and the Limitation Convention of 1931. The Commission at its twelfth session, re-emphasised to the governments the importance of implementing the measures relating to the suppression of traffic in narcotic drugs as enunciated in the narcotic conventions.¹¹³

(f) Study of the Drug Problems

The Commission was established to consider, inter alia, " what changes may be required in the existing machinery for the international control of narcotic drugs and submit proposals thereon to the Council." ¹¹⁴ The Commission was also required to perform this function, i.e., to study the drug problems, in partial fulfilment of its legacy from its predecessor, i.e., the Opium Advisory Committee of the League. Its study programme extended not only to the drugs

referred to in the international drug conventions, but also to "such drugs which have psychoactive effects comparable to those of the drugs under control."¹¹⁵ This the Commission found necessary to do for obvious reasons, i.e., to prevent abuse in respect of the un-listed drugs. This aspect of the Commission's work involved not only a study of the characteristics of drugs, i.e., their convertibility, their necessity for medicinal purposes, the incidence of illicit traffic, the conditions of their production and/or manufacture and the possibilities of finding suitable substitutes for drug manufacture/production but also of the socio-economic aspects of drug-consumption, their attraction for the inadequate personality, and the probable methods of cure of addicts. The drugs on which the Commission did special studies were opium, heroin, coedine, morphine, cannabis, cocaine and barbiturates. The Commission did such studies on raw materials, viz. poppy straw and coca leaf. It also completed pilot studies on certain countries which were much affected by the drug problem, e.g. Afghanistan,¹¹⁶ Iran¹¹⁷ Peru and Bolivia.¹¹⁸ One of the other important contributions of the Commission has been its belief in the efficacy of holding regional conferences¹¹⁹ as a means of studying the problems of narcotic drugs on a broader basis and taking joint action for their suppression. The Commission also drew attention to the possibilities of joint international action under programmes of technical assistance in the field of narcotic drugs.¹²⁰ Such joint international action took place in the form of seminars, task forces or consultative groups with a view to developing co-operation between the enforcement services of countries affected by

illicit traffic in drugs, and proved to be successful.¹²¹

The direct results of such action have been that the national authorities have been more involved in solving their own problems, and that the pattern of the drug-problem in each region as established by such studies has helped identify the problems more accurately. It also helped develop a better method of co-operation with various organisations, viz., the World Health Organization, the International Criminal Police Organization. The initiative which had been taken by the Commission in this matter prompted the nations to bring their problems to the United Nations for solution.¹²² Evidently, the countries which for socio-economic and/or cultural reasons preferred to keep the problems alive, were now assured of a solution by international means, and thus by helping the United Nations in identifying the problem, they helped themselves. This has always been the fundamental philosophy of the Commission's work. In studying the narcotics problems, the Commission had to consider the question of "drug addiction" too. Attention to the question of drug addiction¹²³ necessarily entails a consideration of the related questions, viz. causes of drug addiction, treatment of the drug addicts etc., and this the Commission did in collaboration with the World Health Organization.¹²⁴

(g) Technical Assistance/ Technical Co-operation in

1. Drug Control ¹²⁵

Technical assistance does not denote financial assistance only, it includes services of experts to the beneficiary, such as fellowships

and/or training for the selected members of the country concerned, with a view to equipping them for the development of their own country. In its resolution No. 548 E (XVIII) of 1954, the Economic and Social Council declared that technical assistance would be made available to any country for implementing and developing its social and economic programmes, and this was further confirmed¹²⁶ in its twenty-second session. One of the primary conditions of obtaining technical assistance from the United Nations is that the request for it must come from the country concerned. As far as award of technical assistance to the countries oppressed by the narcotics situation was concerned, it was imperative that a country should have given high priority to narcotics control, even though it needed such technical assistance in other areas of its economic and social programmes. In full recognition of this fact, the Commission emphasised to the Economic and Social Council that not only a separate financial allocation for narcotics control within the regular budget of the United Nations would be necessary, but also that this should be coupled with a continuing programme for technical assistance.¹²⁷ The General Assembly at the recommendations of the Economic and Social Council,¹²⁸ passed a resolution to this effect.¹²⁹

One of the important effects which the Commission's efforts produced was the idea that nations should deal with the problem through regional institutions. Such a regional approach was justified on two grounds, viz., (a) identical or near-identical nature of the problems and (b) advantages of regional administration by regional institutions. The United Nations encouraged this idea, not only in

principle, but also recognised certain regional narcotics bureau Missions¹³⁰ and organised various meetings which took the form of Consultative Groups¹³¹ and/or Seminars.¹³² In certain cases, officers of the U.N. Narcotics Division were sent to regions as a form of technical assistance.¹³³

B. Functions Emanating from the Single Convention
on Narcotic Drugs

The functions of the Commission on Narcotic Drugs have been detailed in Article 8 of the Single Convention, according to which the Commission is authorised to "consider all matters pertaining to the aims of this Convention, and in particular:

- (a) To amend the Schedules in accordance with Article 3;
- (b) To call the attention of the Board to any matters which may be relevant to the functions of the Board;
- (c) To make recommendations for the implementation of the aims and provisions of this Convention, including programmes of scientific research and the exchange of information of a scientific or technical nature; and
- (d) To draw the attention of non-parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith."

These provisions do not, however, prevent the Commission from performing the functions which it performed before the coming into force of the Single Convention. On the contrary, the functions which the Commission performed are still applicable mutatis mutandis in the suppression of the drug problem, and indeed the first sentence of Article 8, which provides that "the Commission is authorized to consider all matters pertaining to the aims of this Convention"¹³⁴ certainly includes its former functions. The only limitation upon this is that the Commission can now perform those functions only if the Economic and Social Council so wish.¹³⁵ In fact, prior to the coming into force of the Single Convention, the Commission in performing most of its functions needed the prior approval of the Economic and Social Council. This improvement upon the former situation has given the Commission much freer hand in performing its functions, and thus in fulfilling the aims of the Convention. Its functions as enumerated in paragraphs (a) and (b) of Article 8 are of a general nature. Paragraphs (c) and (d) of this Article have, however, brought in certain innovations in that while paragraph (c) has specifically authorised the Commission to make recommendations for the implementation of the aims and provisions of the Convention, including the programmes of scientific research and exchange of information of a scientific and technical nature, paragraph (d) has authorised it to draw the attention of non-parties also to its decisions and recommendations "with a view to their considering taking action in accordance therewith." "Non-parties" in this connection presumably includes non-parties to the Single Convention, the U.N. Charter and even

inter-governmental organisations.¹³⁶

The other functions of the Commission which emanate from the Single Convention may be found in Articles 15(1), 18, 31(5) and 32(2). Paragraph 1 of Article 15 provides that the reports of the International Narcotics Control Board (i.e., annual reports on its work and such additional reports as it considers necessary, containing analyses of the estimates and statistical information at its disposal)"shall be submitted to the Economic and Social Council through the Commission, which may make such comments as it sees fit." This directly evidences the Council's desire to have the Board's report first examined by a technical body, i.e., the Commission, which is in direct contact with the Board. According to Article 18, the Parties to the Convention " shall furnish to the Secretary-General such information as the Commission may request as being necessary for the performance of its functions,¹³⁷ and the Parties shall furnish such information in such form and manner as the Commission may desire. It should be observed that the Single Convention has made it obligatory for the Parties to furnish annual reports, the texts of laws and regulations, and seizure reports. Under the earlier narcotics treaties the Parties were under no such obligation to furnish information at the request of the Commission. The Commission may now ask a non-party, but one who is a Member of the United Nations, to furnish any relevant information concerning the drug problem, and such a non-party is, in terms of Article 55 of the U.N. Charter, under an obligation to supply the required information to the Commission. A non-member of

the United Nations who is also a non-party to this Convention is, however, under no obligation to comply with such a request, yet, on the basis of past records it may be hoped that even such a country will co-operate with the Commission in this matter.¹³⁸ Paragraph 5 of Article 31 stipulates that the Parties to the Convention " shall follow as closely as may be practicable the form of import certificate approved by the Commission." This implies that the Commission will have to review the form of import certificate, as and when necessary.¹³⁹ The Commission has also been authorised to devise appropriate safeguards for the prevention of the illicit use of or traffic in those drugs that are carried in the first-aid kits of ships and/or aircrafts engaged in international traffic. In terms of Article 32, paragraph 2, " the Commission, in consultation with the appropriate international organisations, shall recommend such safeguards." ¹⁴⁰ It is for the Commission to decide which international organisations would be the " appropriate organisations" in a particular case.¹⁴¹ International organisations, in this context, will also include inter-governmental and international non-governmental organisations. Recommendations of the Commission in this matter are subject to approval of, or modification by the Council or the General Assembly in the same way as recommendations of the Commission.¹⁴²

2. Functions imposed upon the Commission by the
Economic and Social Council in virtue of
Article 62 of the U.N. Charter

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Article 62 of the U.N. Charter has given the Economic and Social Council a general authority to impose functions upon, amongst others, any specialised agency, and any commission which it may set up in accordance with Article 68, " in economic and social fields... and such other commissions as may be required for the performance of its functions." The "Charter functions" of the Commission have been enumerated in its terms of reference.¹⁴⁴ It may be observed that when adopting the Draft Protocol on Psychotropic Substances,¹⁴⁵ the Commission was authorised to act under these terms of reference, in addition to its general authority under Article 8 of the Single Convention. Although characteristically, "Charter functions" would not allow the Commission a free hand (because its activities will be dictated by the directives of the Charter, which in the present case will be issued by the Economic and Social Council), it appears that at least in two areas of its "Charter functions" the Commission has been allowed a certain degree of independence:

- (a) in advising " the Council on all matters pertaining to the control of narcotics and preparing such draft international conventions as may be necessary" ; and
- (b) in " considering what changes may be required in the existing machinery for the international control of narcotic drugs and submitting proposals thereon to the Council."

In practice, most of the recommendations of the Economic and Social Council even under the "Charter functions" are initiated by the Commission, despite the fact that the Council has complete authority over the recommendations and decisions of the Commission in regard to such functions.¹⁴⁶ The Commission's attempt to adopt a broader conception of narcotics control by considering those substances¹⁴⁷ that are outside the purview of the narcotics treaties, has not met with any objection from the Economic and Social Council; on the contrary, such activities of the Commission received the approval of the Council in the form of resolutions.¹⁴⁸ It may, however, be observed that the "Charter functions" of the Commission are concomitant with the enlargement of the activities of the Economic and Social Council. Also, the Commission, in performing its obligatory "Charter functions" is under the complete authority of the Economic and Social Council. The "Charter functions" of the Commission may be viewed as complementary to its "treaty functions".

3. Functions Emanating from the Rules of Procedure of
the Functional Commissions of the Economic and
Social Council¹⁴⁹

Rule 1 of the Rules of Procedure of the Functional Commissions of the Economic and Social Council provides that the "functional commissions of the Economic and Social Council shall hold one session annually unless the Council decides otherwise." The Commission on

Narcotic Drugs has been recognised as one of the functional commissions of the Economic and Social Council,¹⁵⁰ and indeed, in terms of Rule 4, "the Secretary-General shall notify the members and also in the case of the Commission on Narcotic Drugs, the President of the International Narcotics Control Board, of the date and place of the first meeting of each session." In drawing up the provisional agenda, the Secretary-General shall, in the case of the Commission on Narcotic Drugs, communicate it to, among others, the President of the International Narcotics Control Board.¹⁵¹ Such a provisional agenda shall include items if proposed by the Commission.¹⁵² In other words, the Commission must take the initiative and the appropriate measures, at appropriate times, in order to propose necessary items for their inclusion in the provisional agenda. At each session, the Commission may also, in consultation with the Secretary-General, set up such committees as are deemed necessary and refer to them any question on the agenda for study and report.¹⁵³ The Rules of Procedure do not prohibit the Commission, nor any of its subsidiary bodies from approving any proposal, to further its cause, except that any proposal involving expenditure from the United Nations fund must, before being approved by the Commission, be submitted by the Chairman to the members, their attention to be drawn to the estimate and discussion invited on it.¹⁵⁴

Rule 66 has empowered the Commission to set up such sub-commissions as may be authorised by the Economic and Social Council, and, unless otherwise determined by the Council, the Commission shall define the composition and functions of each sub-commission. It appears

that such a sub-commission cannot be terminated or wound up at the discretion of the Commission.¹⁵⁵

One of the remarkable functions which the Commission has been empowered to perform is its right to invite any " Member of the United Nations which is not represented on it to participate in its deliberations on any matter which the Commission considers is of particular concern to any such Member. " ¹⁵⁶ Although a discretionary right, Rule 72 has indeed been designed to honour the rules of natural justice.

Comments

The Single Convention did not provide for the composition of the Commission on Narcotic Drugs, and it may therefore be presumed that the already existing Commission was found suitable by the Parties to the Single Convention. The functions of the Commission, as has been indicated above, are not only wide but also varied. Functionally, it is a horizontal body. In its functional sphere, it is not only assisted by the Secretariat but also by the Division of Narcotic Drugs and even by some specialised agencies viz., the World Health Organization, the International Labour Organization, amongst others. Although the Commission has supervisory authority in its own sphere of work, in performing its functions, it maintains a co-operative and friendly attitude towards the states and organisations concerned. The Commission, in fulfilling the objects of the Single Convention has adopted

an inter-disciplinary approach embracing medicinal, scientific, economic and social aspects of the drug problem. In extension of this argument, it may also be stated that it has been treating the word "narcotic" in its widest possible interpretation, and thereby extending the international narcotics regime as far as possible. The extra authority given to the Commission through the Single Convention in fighting the narcotics problem (i.e., the authority given to it in addition to its "Charter functions" with which alone it was empowered prior to the coming into force of the Single Convention) has greatly strengthened the position of the Commission in executing its functions.¹⁵⁷

One of the important aspects of the Single Convention is its aim to implement its provisions universally,¹⁵⁸ whether or not the states are parties to it, or to the United Nations. The novelty of the Commission's work perhaps lies in its attempt to make the Single Convention a totally universal one by inducing non-parties to observe its recommendations and decisions. This has further been strengthened by the provisions of Article 3 (i.e., the provisions which enable the Commission to communicate its decisions on changes in the Schedules of the Single Convention to non-parties who are Members of the United Nations) and Article 8(d) (i.e., the provision for apprising all non-parties, whether or not they are Members of the United Nations of the decisions and recommendations of the Commission). Although the recommendations and decisions of the Commission are subject to the approval of the Economic and Social Council and/or the General Assembly, except recommendations¹⁵⁹ and decisions of minor importance, they are

usually accepted by the aforesaid organs ¹⁶⁰ without many modifications.

The Commission's role should not be viewed as that of a "guardian". Its role is more that of a "monitor". It is an expert body. It has not law-making function; nevertheless, it initiates law-making. It has no judicial power and/or functions. It exercises only administrative and executive powers, which include the power to impose sanctions upon states, if necessary. Although the Commission has been given extensive power of a varied nature, the fullest exercise of such power depends upon the extent of co-operation the states are willing to offer. A potential has been established, and it is for the states to realise that potentiality by co-operation and mutual understanding.

THE INTERNATIONAL NARCOTICS CONTROL BOARD(a) Introduction

The International Narcotics Control Board (hereinafter called the Board) was created to replace the Permanent Central Board and the Supervisory Body. The composition and functions of the latter two bodies have already been discussed.¹⁶¹ The Board assumed office on 2nd March, 1968¹⁶² and although until this date both the Permanent Central Board and the Supervisory Body were working in its place, it is observed that the nature of the functions of the latter two bodies was not significantly different from what it was at the time they were created, and therefore, it is not necessary to give an account of their functions from the date they came under the U.N. system of control until the date of their dissolution.

(b) Composition of the Board under the Single Conventionon Narcotic Drugs

The procedure which offers the basis of election of the members of the Board was drawn up¹⁶³ by the Commission on Narcotic Drugs, and approved by the Economic and Social Council.¹⁶⁴ Articles 9 and 10 of the Single Convention detail the method of composition of the Board. It consists of thirteen members¹⁶⁵ who are elected for a period of five years by the Economic and Social Council. Such members may be re-elected.¹⁶⁶ The procedure for election of members

is as follows:

- (a) "Three members with medical, pharmacological or pharmaceutical experience from a list at least of five persons nominated by the World Health Organization, and
- (b) Ten members from a list of persons nominated by the Members of the United Nations and by Parties which are not Members of the United Nations." ¹⁶⁷

It may be observed in this connection that, in constituting the Board, much emphasis has been given to the medical consideration, justifiably, in that the Board's functions need, inter alia, the service of medical experts.¹⁶⁸ This was also found necessary since the Board virtually took over the functions of the Permanent Central Board and the Supervisory Body, and two members of these bodies were nominated by the World Health Organization. What is more interesting, however, is the nomination of some members by the Parties to the Convention, who are not Members of the United Nations. In order to achieve full co-operation in this area of international law, membership of the Board has not been linked with that of the United Nations.¹⁶⁹ This is also justified in view of the principle of "equitable geographic representation" of the producing, manufacturing and consuming countries, which the Convention has adopted. The novelty of the nomination of candidates by governments lies in the fact that such candidates need not be their nationals;¹⁷⁰ persons with a good knowledge of the problems concerning narcotics in those areas and also of international narcotics administration, should, as a matter of

policy, be nominated.¹⁷¹ The Economic and Social Council is not bound to choose the candidates from the panels prepared by the Committee on Candidates.¹⁷² On the other hand, the treaty does not prohibit the Economic and Social Council from electing two persons of the same nationality, although such an eventuality will necessarily disturb the balance which is meant to be attained by following the principle of equitable geographical representation.¹⁷³

General provisions aimed at upholding the impartiality of the members of the Board have been made in the Convention. In terms of paragraph 2 of Article 9, "Members of the Board shall be persons, who by their competence, impartiality and disinterestedness, will command general confidence." During the term of office, they shall not be allowed to engage in any activity which would impair their impartiality in the discharge of their functions,¹⁷⁴ and the "Council shall, in consultation with the Board, make all arrangements necessary to ensure the full technical independence of the Board in carrying out its functions." The phrase "full technical independence" implies that the Economic and Social Council shall ensure the independence of the Board only in discharging those of its functions, which are of a technical nature. The General Assembly of the United Nations has full control over the budget of the Board,¹⁷⁵ and it is accountable to the Council.¹⁷⁶ The provisions concerning impartiality of the members bear a marked similarity to those of the Permanent Central Board.¹⁷⁷ It may also be observed that, in terms of Article 9, paragraph 2,

government officials may be appointed members of the Board, which was also the case with the Permanent Central Board, provided of course their appointments with their respective governments cease.

One of the principal differences between the International Opium Convention, 1925 and the present Convention is that whereas the former categorically excluded government employees only¹⁷⁸ from membership of the Permanent Central Board, the latter, by emphasising that during their (i.e., the members) term of office " they shall not hold any position or engage in any activity..." implies that exclusion not only of government assignments, but also of non-governmental assignments. However, the question remains as to how far these members will be able to maintain their impartiality, after serving a long period with a government, and especially if they are to seek employment with their governments in the future. The technical independence of the members has, however, been maintained by Article 11 of the Convention also, according to which the Board shall, inter alia,

(a) elect its own President and such other officers as it may consider necessary;¹⁷⁹

(b) adopt its own rules of procedure.

The provisions empowering the Board to elect its own President and such other officers (e.g. Vice-President, Rapporteurs etc.) as it may consider necessary, and to adopt its own rules of procedure are laudable,¹⁸⁰ because members of a technical body should be elected by the body itself. The meetings of the Board are usually held in private, and to such meetings are usually invited two other

representatives, one representing the Secretary-General of the United Nations and the other, the World Health Organization. The Board shall invite a representative of a state if any item on an agenda of its meeting directly relates to the narcotic drug matters of that state. It may hold confidential meetings among its members only, if necessary.

However, it appears that the Board can not only accept the resignation of its members, but also dismiss them, if necessary. In terms of Article 10, paragraph 3, " a member of the Board who has failed to attend three consecutive sessions shall be deemed to have resigned." Evidently, any failure on the part of a member of the Board to attend three consecutive sessions will automatically authorise the Board to assume that the member concerned has resigned, although a replacement will be found in the usual way, i.e., in accordance with the procedure of appointment of a new member. However, presence for a very short period at the sessions will not justify loss of membership.

The Board appears to have been given more effective power in respect of dismissal of its members. In terms of Article 10, paragraph 4, the " Council, on the recommendation of the Board, may dismiss a member of the Board who has ceased to command the general confidence of the Board," as referred to in Article 9, paragraph 2, and " such recommendation shall be made by an affirmative vote of nine members of the Board." ¹⁸¹ Should however a member fail to resign promptly in terms of Article 10, paragraph 3, the power of dismissal of the

Board under paragraph 4 may come into operation. This system has presumably been recommended in view of the nature of the work the Board is required to perform. That decisions concerning this matter should require a two-thirds majority, instead of unanimity, is essential to efficient operation, since any other procedure would have a crippling effect upon the proper functioning of this technical body.

The method of composition of the International Narcotics Control Board under the Single Convention is highly elaborate. Nevertheless, the drafters of the Convention seem to have taken into consideration the important points which are usually found necessary in constituting such a body. The degree of success in this matter may be assessed in terms of its capacity to discharge the functions which have been entrusted to it. It is, therefore, necessary to examine the functions of the International Narcotics Control Board.

Functions of the International Narcotics Control Board

The functions of the Board have been enumerated in Articles 12, 13, 14, 19 and 20 of the Single Convention, and in Article 2 of the 1972 Protocol amending Article 9 of the Single Convention. Although each of these Articles covers a different kind of function of the Board, in view of their close relationship it is appropriate to deal with them under the following headings:

(a) Administration of the Estimate System (Article 12)

The importance of the Estimate System has already been explained in a previous Part of this thesis.¹⁸² Administration of the estimate system under the Single Convention is closely connected with the "estimates of drug requirements" (Article 19), the Parties are required "to furnish to the Board each year for each of their territories, in the manner and form prescribed by the Board,¹⁸³ estimates on forms supplied by it."¹⁸⁴ The Parties shall also inform the Board of the method¹⁸⁵ they have used in determining the quantities shown in the estimates and of any changes in the said method (Article 19(4)). By Article 12 the Board has also been authorised to fix the date(s)¹⁸⁶ by which such estimates should be submitted to it. The authority of the Board in this regard extends even to the countries¹⁸⁷ and territories¹⁸⁸ to which this Convention does not apply (Article 12(2)). Should, however, any state, whether or not a Party to the Convention, fail to furnish estimates within the specified date, the Board shall, in co-operation with the government concerned, to the extent possible,

establish the estimates for that country. The Board shall examine the estimates,¹⁸⁹ including supplementary estimates and except as regards requirements for special purposes,¹⁹⁰ may either ask any country to supply further information on the estimates which have already been furnished, or to explain any statement contained therein (Article 12, paragraph 4). It is also the function of the Board to confirm the estimates, including the supplementary estimates, expeditiously,¹⁹¹ and to amend such estimates, where necessary, with the consent of the government concerned, and especially in the event of a disagreement between the government and the Board, the latter shall have the right to establish, communicate and publish its own estimates including supplementary estimates.¹⁹² The Board shall, in addition to the annual report on its work, and analysis of the estimates and statistical information at its disposal (Article 15), "issue such information as in its opinion will facilitate the carrying out of this Convention." (Article 12, paragraph 6)

The Board's function in this regard under the Single Convention is much wider than that of the Permanent Central Board. The Board has been authorised by the Convention to ask for estimates of opium production,¹⁹³ in addition to furnishing estimates of opium requirements, amongst other narcotic substances. Unlike the previous conventions, the Single Convention has also authorised the Board to fix the date by which estimates are to be furnished by various countries to this organ. In order to make the Convention universally applicable, the Board has also been authorised to apply its estimates system to the countries and territories to which this Convention does not apply.

Such a provision has a further bearing because in the event of such a territory or country not complying with the request of the Board, not only will its estimates be established by the Board, but also the limits of imports ¹⁹⁴ and exports ¹⁹⁵ of drugs. The Board's position in this matter appears to be stronger than that of the Supervisory Body. The Single Convention does not however offer a guide-line which the Board is required to apply in examination of the estimates. It has indeed given the Board a considerable degree of discretion in this regard, despite the fact that the Board in performing this function should collaborate with the government concerned and ensure that no undue difficulty is caused to governments through a short supply of drugs, especially for medical and scientific purposes. The Board's function in this regard is, however, limited to the extent that it cannot re-examine the estimates in force other than those established by it (Article 12, paragraphs 4 and 5) unless the government concerned has furnished supplementary estimates.¹⁹⁶ Nevertheless, the Convention does not preclude the Board from advancing suggestions to any government at any time should a re-consideration of the estimates of that country appear to be desirable. The general authority given to the Board " to issue such information on the estimates as in its opinion will facilitate the carrying out of this Convention " (Article 12, paragraph 6) , is laudable. The Board, in fulfilment of this function, publishes each year four supplements, in order to bring the position of drug requirements up to date. However, in view of the varying situations in different countries it is not possible for the Board to administer the estimates system

absolutely accurately. The most it can do is to offer certain guiding principles to the governments so as to enable them to develop their own methods in accordance with the needs of the prevailing circumstances.

(b) Administration of the Statistical Return System

In terms of Article 10 of the 1972 Protocol, which has amended Article 20 of the Single Convention, the Parties are required to furnish to the Board by a certain date, for each of their territories, statistical returns on forms supplied by the Board in respect of certain specified matters.¹⁹⁷ Article 13 has authorised the Board to determine the manner and form¹⁹⁸ in which statistical returns shall be furnished and to prescribe the forms therefor. This Article has also empowered the Board to examine the returns " with a view to determining whether a Party or any other State has complied with the provisions of this Convention." The Board has not, however, been authorised to question or express an opinion on statistical information relating to those drugs which are required by a Party or any other State for special purposes.¹⁹⁹ Although the Convention expressly authorises the Board to request the governments of those countries, to which this Convention does not apply, to furnish estimates in accordance with its relevant provisions (Article 12) no such express authority has been given to the Board, by which it can ask such governments to furnish statistical returns. Nevertheless,

as the statistical returns system is complementary to the estimates system, the Drafting Committee of the Plenipotentiary Conference which adopted this Convention, having noted this omission opined that the authority of the Board to invite non-parties to furnish statistical returns may be "implied" by Article 13, paragraph 2.²⁰⁰ In practice, however, the non-parties willingly submit such returns for their own benefit because by not doing so they will be unable to correct inaccurate information furnished by other governments. Also, in the event of a country indicating that a non-party has imported drugs in excess of its authorised limit, the Board, in the absence of a statistical return from the non-party concerned, may impose an embargo on future imports of narcotic drugs by that country.²⁰¹

The Board, being the ultimate authority to determine the manner and form in which the countries should supply the statistics on drugs, may also ask the governments to indicate the quantities of drugs obtained from various sources, i.e., whether from opium or from poppy straw or obtained as a by-product etc., and the total quantity of drugs they will manufacture in a given period of time. The Board has also designed the form accordingly.²⁰² Similar instructions are issued by the Board to the governments in respect of various preparations they manufacture.²⁰³ The Board's functions extend even to international trade in narcotic drugs. The exporting countries are required to submit to the Board details of their exports of drugs and the importing countries are similarly obliged to furnish to the Board the amount of each kind of drugs they have imported from

the various countries or territories of origin.²⁰⁴ Such details enable the Board to determine the discrepancy, if any, in the figures relating to import and export of drugs and, in the case of any discrepancy, to advise a government to investigate if there has been any illicit traffic in drugs.²⁰⁵ The Board has also the authority to ask the governments to show separately the amounts of drugs imported for "special purposes",²⁰⁶ and also to include them in the total figures of imports.²⁰⁷ Although the Board does not require separate figures on domestic and international seizures,²⁰⁸ (although entitled to do so²⁰⁹) it may, however, ask the governments to indicate separately the quantities of drugs so seized which have been employed for licit purposes or destroyed. The Board will have an account from the governments not only of refined and crude drugs, their salts and preparations other than those in Schedule III,²¹⁰ but also of the drugs held in bonded warehouses, free ports or free zones or passing in transit.²¹¹

It appears that the Board has devised a comprehensive system of collecting statistics on drugs. Article 13, paragraph 2 gives rise to the question as to how the Board can determine whether or not a country has failed to comply with the provisions of this Convention, i.e., by not furnishing accurate statistics and other relevant information in the manner and form prescribed by the Board. This the Board can do in two ways, namely, by corroborating the figures with the Food and Agriculture Organization which also receives information on the production of opium in accordance with

Article 11 of its constitution, and also by verifying the figures which it receives on drugs seized from the illicit traffic, but which have been used for licit purposes.²¹² The Board may also detect any discrepancy by comparing the figures of import of a country with those of export of the countries of origin, and in this respect the Board is assisted by Parties furnishing relevant information in accordance with Article 18 of the Convention. The Convention, however, does not specify whether information from private sources is acceptable.

It appears that in order to enable the Board to discharge this function, i.e., administration of the statistical return system, the Convention has given it effective power. Yet the Board's authority has been limited by Article 13, paragraph 4, to those drugs which are required for special purposes. Moreover, the Board's success in this regard is to a considerable extent dependent upon the co-operation of the countries and their ability to maintain "a special administration for the purpose of applying the provisions of this Convention" in pursuance of Article 17, and to adopt "measures of supervision and inspection" of the matters relating to drug-manufacturing in pursuance of Article 34(b). Nevertheless, it is to be observed that the states are willing to co-operate positively in order to enable the Board to discharge its functions effectively.

(c) To Take Measures to ensure the Execution of the
Convention

(Article 14 of the Single Convention and
Article 6 of the 1972 Protocol.)

The Board is required to take measures not only when the government of a country has failed to carry out the provisions of the Single Convention but also if there exists a potential risk that it may become an important centre of illicit cultivation, production or manufacture of, or traffic in or consumption of drugs, even though a government has not failed to implement the provisions of the Convention. In other words, the Board's measures are remedial and preventive. The Board will have opportunity of taking such measures under Article 14, paragraph 1 of the Single Convention at four different stages:

- (i) Article 14, paragraph 1, sub-paragraph (a), and
Article 6, paragraph 1, sub-paragraph (a) of the
1972 Protocol

If on examination of the information submitted by governments to the Board under the provisions of this Convention, or if on having some relevant information from the United Nations organs, or a specialised agency or an inter-governmental or a non-governmental organisation which has direct competence in the subject matter and which has consultative status with the Economic and Social Council under Article 71 of the U.N. Charter or which enjoys a similar status by special agreement with the Council, the Board has " objective reasons to believe that the aims of this Convention are being seriously endangered by reason of the failure of any Party, country or

territory to carry out the provisions of this Convention", it shall have the right to propose to the government concerned the opening of consultations or to request it to furnish an explanation.

- (ii) Article 14, paragraph 1, sub-paragraph (b), and
Article 6, paragraph 1, sub-paragraph (b) of
the 1972 Protocol

After taking action under sub-paragraph (a), the Board should if it find it necessary, may call upon the government concerned to adopt such remedial measures as the circumstances will demand;

- (iii) Article 6, paragraph 1, sub-paragraph (c) of
the 1972 Protocol

"The Board may, if it thinks such action necessary for the purpose of assessing a matter referred to in sub-paragraph (a) of this paragraph, propose to the Government concerned that a study of the matter be carried out in its territory by such means as the Government deems appropriate. If the Government concerned decides to undertake this study, it may request the Board to make available the expertise and the services of one or more persons with the requisite competence to assist the officials of the Government in the proposed study. The person or persons whom the Board intends to make available shall be subject to the approval of the Government. The modalities of this study and the time-limit within which the study has to be completed shall be determined by consultation between the Government and the Board. The Government shall communicate to the

Board the results of the study and shall indicate the remedial measures that it considers necessary to take."

A decision of the Board concerning the matter in Article 6(1)(c) of the 1972 Protocol is largely dependent upon the decision of the government concerned. The incorporation of Article 6(1)(c) in the 1972 Protocol does not appear to represent any improvement in that the proposed action may be undertaken by the Board under Article 6(1)(a) through consultation with the government concerned. The real purpose of a consultation is not merely to discuss but also to suggest remedies.

(iv) Article 14, paragraph 1, sub-paragraph (c), and
Article 6, paragraph 1, sub-paragraph (d) of the
1972 Protocol

If the measures taken by the Board under Article 14, paragraph 1, sub-paragraphs (a) and (b) of the Single Convention do not produce the desired results, or that there is a serious situation that needs co-operative action at the international level with a view to remedying it, the Board may call the attention of the Parties, the Council and the Commission to the matter. The Board shall so act if:

- "(a) the aims of this Convention are being seriously endangered and it has not been possible to resolve the matter satisfactorily in any other way;

- (b) it finds that there is a serious situation that needs co-operative action at the international level with a view to remedying it; and
- (c) bringing such a situation to the notice of the Parties, the Council and the Commission is the most appropriate method of facilitating such co-operative action."

If one of these conditions is fulfilled, the Council, after considering the reports of the Board, and of the Commission, if available on the matter, may draw²¹³ the attention of the General Assembly to the matter.

It is in the event of its taking such action that the Board may, if necessary, recommend the Parties to stop the import and export of drugs from or to the country or territory concerned either for a designated period or until it is satisfied as to the situation in that country or territory. The right of the state concerned to bring the matter before the Council has, however, been maintained.

The Single Convention, in its present form, is an improvement in this regard, upon the previous drug conventions. The International Opium Convention of 1925, the Limitation Convention of 1931 and the 1953 Protocol authorised the Permanent Central Board to take enforcement measures (or to impose sanctions) against any recalcitrant country, party or not to any of these instruments. Nevertheless, there are differences between the provisions of the Single Convention and those of the earlier Conventions and Protocols

in that under the previous system, the Board was authorised to recommend an embargo on the importation of opium only from a country or territory which failed to comply with the provisions of the treaties in force,²¹⁴ and a similar embargo on the exportation of other drugs to such a country or territory,²¹⁵ while under the Single Convention the Board has been authorised to recommend an embargo on the import or export or both of all drugs which are under international control.²¹⁶ Moreover, under the 1953 Protocol, the Board had been allowed to hold a local inquiry in an effort to study a particular opium situation with the consent of the government of the country or territory concerned.²¹⁷ The Single Convention does not contain any provision in this regard, although it may be assumed that it does not prevent the Board from holding any such inquiry at the request of the government of the country or territory concerned. Under the Single Convention the Board's position has been strengthened by giving it authority to "call upon the government concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of this Convention."²¹⁸ Incidentally, under the 1953 Protocol, the Board had been authorised to take such measures only in the case of "gravely unsatisfactory opium situation".²¹⁹ Yet again, under the Single Convention, the Board's authority to take measures in this regard is conditional upon two things, viz.,

(a) the Board must have "objective reasons to believe that the aims of this Convention are being seriously endangered by reason of the

failure of any Party, country or territory to carry out the provisions of this Convention", ²²⁰ and (b) a persistent failure of a country or territory to furnish necessary information, statistical or otherwise, which is adversely affecting the international situation may cause the Board to take the initiative under Article 14, paragraph 1, sub-paragraph (a), and Article 6, paragraph 1, sub-paragraph (a) of the 1972 Protocol. However, under what circumstances the Board will have "objective reasons to believe" cannot easily be concluded from the provisions of this Convention, although it is expected that a failure of a Party, country or territory to adopt and to observe a proper control control system, thus endangering the international situation and not the domestic situation, will justify the Board's taking action. Again, a failure on the part of a country or territory to furnish adequate information or to supply information by a specified date, which does not disturb the international situation, will not authorise the Board to take any such initiative.²²¹ Under Article 14, paragraph 1, sub-paragraph (a), an appropriate situation for the Board to take action may arise where a government fails to supply adequate information, or supplies such information as is adequate, but which represents a state of affairs detrimental to the international situation. In making a decision as to whether or not to take measures against a country on the strength of the information supplied by a U.N. organ and/or by specialised agencies,²²² the Board will take into account such information as may suggest that the aims of this Convention have been endangered.

The Board's authority to ensure the execution of the provisions of the Convention is very wide. In respect of a Special Administration also, as referred to in Article 17 of the Convention, the Board may be informed by the Secretary-General or the Commission²²³ of any failure on the part of a state or territory, Party to the Convention, to maintain such an administration. Should however a non-party for which maintenance of such an administration is not obligatory, appear to be endangering the international situation, the Board may also apply pressure in the usual way, by placing an embargo on imports and/or exports to that country. The causes of taking measures to ensure the execution of the Convention-provisions emanate also from the provisions of Articles 20²²⁴ and 21²²⁵ which relate to "Statistical Returns to be Furnished to the Board" and "Limitation of Manufacture and Importation" respectively. If the Board has reason to examine the authenticity of information on "seizure of drugs and disposal thereof" supplied by the Parties to it on statistical returns, the Board, in exercise of its power under Article 15, paragraph 3 "may require such further information as it considers necessary to complete or explain the information contained in such statistical returns" in order that the execution of provisions of the Convention within its competence may be ensured. Similarly, in terms of sub-paragraphs (a) and (b) of paragraph 4 of Article 21, if it should appear from the statistical returns on imports or exports that the quantity exported to any country or territory exceeds the total of the estimates for that country or territory, subject to the permissible addition to and deduction from the quota,²²⁶ the

Board will have occasion to communicate this fact to those states Parties to the Convention, which in its opinion should be so informed, and shall place an embargo upon exports of the drugs concerned to that country or territory.²²⁷ The Board may notify and request the non-parties to the Convention in this regard in virtue of Article 42 of this Convention, in the hope that they will co-operate with it.

The Board may also initiate measures to ensure the execution of the provisions of the Convention concerning the manufacture of drugs, provided it has reason to believe that a Party to the Convention has violated its obligations to prevent the manufacture of drugs by non-governmental enterprises except under licence, and has allowed them to abuse the provisions of Article 29(2)(c).²²⁸ The initiative which the Board might take under Article 14(1)(b), and Article 6(1)(b) of the 1972 Protocol to ensure the execution of the provisions of the Convention will be aimed at remedial measures, which it will find advisable for the purpose. The measures under sub-paragraph (a) are of a confidential nature and, in the exercise of such measures the Board shall have the "right to propose to the Government concerned the opening of consultations or to request it to furnish explanations." Under sub-paragraph (a) the Board's right to ask for an explanation from the government or territory concerned acts as "entering a caution" against that country in that it points out that certain irregularities have occurred. The Board has been given a wide discretion in taking measures under sub-paragraph (b). It has been given discretionary power in deciding whether measures under

sub-paragraph (b) are warranted, and if so, what remedial measures would be necessary, under the circumstances for the execution of the provisions of the Convention. What is to be noticed is that in the paragraph (b) situation, the Board has not been authorised to take or suggest any measures which will change the existing system of drug administration in the country concerned, i.e., from a private enterprise to a government enterprise,²²⁹ although it may suggest changes in the domestic law relating to narcotics in the country or territory concerned. The Board may also suggest changes in the laws and regulations of a country or territory concerned, as regards the discharge of its functions under Article 15.²³⁰

The Board's action under sub-paragraph (d) of Article 6 of the 1972 Protocol may be called a "public action" because it not only rebukes the country or territory concerned, but also has the right to publish its reports through the Council. In fulfilment of the principles of "natural justice", if the Board publishes in its report a decision taken under Article 14 or any information relating thereto, it shall also publish therein the views of the government concerned, provided of course that government has so requested. However, such a publication of the Board's report under Article 15 will not serve its purpose unless a communication has been made separately to the government concerned, indicating its failure to adopt remedial measures suggested by the Board or to give a satisfactory explanation as to the unsatisfactory situation in the area under the jurisdiction of that government.

The function of the Board under Article 6(2) of the 1972 Protocol amending Article 14(2) of the Single Convention should be distinguished from those under paragraphs 1(a), 1(b) and 1(c) of Article 6 of the said Protocol. Action under Article 6(2) is not warranted unless action under paragraph 1(a) of Article 6 has been initiated, although action under paragraph 1(d) of Article 6 does not have to be adjoined to or supported by the provisions of Article 6 (2) of the Protocol. On the other hand, a simultaneous action under paragraph 1(d) and paragraph 2 is quite possible, although the Board may not find it advantageous or advisable to do so. Article 12 (2) of the 1953 Protocol had authorised the Permanent Central Board to recommend the cessation of import and export of opium to and from a recalcitrant country, and embargoes could be mandatory.²³¹ Unlike the 1953 Protocol the Single Convention has not authorised the International Narcotics Control Board to impose a mandatory embargo.²³² Nevertheless, the Single Convention has authorised the Board to impose an embargo not only upon opium, but also upon all other listed drugs. The decision as to the length of an embargo, however, rests with the Board and it is recommended to be made until such time as the Board is "satisfied as to the situation in that country or territory." This means that an embargo may be lifted much earlier than the recommended period if the government of the country or territory concerned has taken appropriate measures as recommended by the Board to remedy the situation, and the Board is satisfied as to the degree of improvement in this matter, which the country has attained or is expected to attain.²³³ In the event of the embargo being prolonged, the Board will presumably have to go

through the procedure of Article 14 of the Single Convention and Article 6 of the 1972 Protocol. In other words, any decision on an extension of the embargo period is to be treated as a "new" decision. Action under Article 6(2) of the 1972 Protocol amending Article 14(2) of the Single Convention is also applicable to "all non-metropolitan territories for the international relations of which any Party is responsible, except where the previous consent of such a territory is required by the Constitution of the Party or of the territory concerned, or required by custom." ²³⁴

The concluding line of Article 6(2) of the 1972 Protocol amending Article 14(2) of the Single Convention that "the State concerned may bring the matter before the Council", is rather complex. The Convention has throughout used the expression "country" or "territory". The term "territory" has been used to mean "a part of a State", and in that sense only, the state concerned will be allowed to bring this matter, i.e., the question regarding embargo before the Council. "The State", in this paragraph means, "a State Party to the Convention" but not necessarily a Member of the United Nations, whereas in terms of Article 14(5) of the Single Convention any state whether or not a Party to the Convention or a Member of the United Nations "shall be invited to be represented at a meeting of the Board at which a question directly interesting it is concerned under this Article." ²³⁵ "Any State" as referred to in paragraph 5 may be able to bring such a matter before the Council only under the

~~Council's Rules of Procedure and not on the strength of Article 6(2) of~~

the 1972 Protocol, amending Article 14(2) of the Single Convention.

The evidences the fact that, although for technical reasons the Council will deal with the issues concerning these special cases on

the recommendation of the Board, the Board in discharging its function attempts to adopt a very democratic procedure by inviting "any State" .

Article 14 (3)²³⁶ enables the Board to take ultimate action in an effort to ensure the execution of provisions of the Single Convention. However, "report" under this paragraph has a special meaning. A report of the Board under this paragraph must be prepared separately and transmitted to the government of the country or territory concerned. Therefore, a report of the Board under Article 15, in which mention may be made of the Board's action under Article 14 (3), will not constitute a report within the meaning of Article 14 (3). Moreover, from a procedural point of view, a report under Article 14 (3) has to be transmitted to the Party by the Council, while that under Article 15 will be communicated to to the Parties by the Secretary-General. Reports under Article 15 are required to be submitted to the Council through the Commission on Narcotic Drugs. To put it in another way, the Board must maintain the identity of a report under Article 14 (3) in order to emphasise the seriousness of a particular drug-situation. It is therefore quite possible for the Board to prepare two reports, one in accordance with Article 14(3) and the other in pursuance of Article 15 of the Convention. The expression , the Board " shall have the right to publish a report" in Article 14 (3) indicates that the right of the Board not to publish a report under this paragraph has been maintained, and this may be evidenced by Article 6 (1) (d) of the 1972 Protocol which states that if the " Board finds that the

Government concerned has failed ...". Indeed, any decision as to what measures should be taken and whether a report should be published in the event of the failure of a government to observe the provisions of the Convention entirely rests with the Board.

In this connection, the decision-making process of the Board merits consideration. In terms of Article 14 (6), decisions of the Board, on matters coming under this Article, "shall be taken by a two-thirds majority of the whole number of the Board". This means that for decisions under this Article affirmative votes of nine out of thirteen members of the Board will be necessary.²³⁷ This Article has not pre-supposed any situation of "abstention" of any members from voting. However, it is only under two situations, viz., (a) a situation under Article 10 (4), i.e., dismissal of a member of the Board,²³⁸ and (b) a situation under Article 14, that a decision by a two-thirds majority is required.²³⁹ In respect of all other decisions, it is assumed that the rule of simple majority will prevail,²⁴⁰ although in terms of Article 11 (1), the Board shall, inter alia, "adopt its rules of procedure." It appears that the Convention has rightly emphasised the importance of the two situations where a two-thirds majority will be required for a decision.

(d) Vigilance over the Manufacture and Importation
of Drugs

This function of the Board is complementary to its function relating to the administration of the estimates system. In other

words, the estimates system is to be used by the Board as a mirror in order to see if a country is abiding by the limits of estimates established either by itself ²⁴¹ or by the Board. ²⁴² The system of limitation as devised by Article 21 of the Single Convention is applicable to all substances listed in Schedules I and II, ²⁴³ but it does not cover poppy straw and the leaves of the cannabis plant (if not accompanied by the tops) because they are not listed in Schedules I and II and hence are not " drugs" within the meaning of the Single Convention. Article 21 (1) of the Single Convention specified the permissible quantity of each drug that a country may import or manufacture in any one year. ²⁴⁴ According to Article 21 (3) if the Board finds that the quantity manufactured and imported in any one year has exceeded the total quantities specified in paragraph 1 (less any deductions in accordance with paragraph 2) any such excess shall , in the following year, be deducted from the quantity to be manufactured or imported and from the total of the estimates as defined in Article 9 (2) (a) of the 1972 Protocol amending Article 19 (2) of the Single Convention. ²⁴⁵ According to this Article, i.e., Article 21 (3) of the Single Convention the Board is required to deduct only those quantities which remained at the end of the year as stock in a country resulting from excessive manufacture and/or importation during that year. ²⁴⁶ However, the Board can deduct the excess amount from the estimates of the following year only when it has received statistics of stocks of the following year under Article 20 (1) (f). ²⁴⁷ On receiving such estimates the Board informs the

governments individually, although the governments themselves are supposed to have the required data at their disposal and also sufficient knowledge of the Board's policy in this regard, to enable them to compile and allocate appropriate quotas to manufacturers and importers for the following year. Article 21 (3) empowers the Board to deduct any amount of drugs from the estimates of a country as it considers necessary, and in the case of conflict between the figures of the Board and those of the government concerned, the Board's figures will prevail.^{2/3}

In terms of Article 21 (4) , if it appears from the statistical returns on imports or exports that the quantity exported to any country or territory exceeds the total of the estimates for that country (as defined in Article 9(2)(a) of the 1972 Protocol, amending Article 19 (2) of the Single Convention), with the addition of the amounts shown to have been exported, and after deduction of any excess (in accordance with paragraph 3 of this Article), the Board may notify this fact to states which, in its opinion, should be so informed. The states, on receiving such a notification, shall not during the year in question authorise any further export of the drug(s) concerned to that country or territory, except:

- (i) where a supplementary estimate has been furnished for that country or territory in respect both of any quantity over-imported and of the additional quantity required; or
- (ii) where the export, in the opinion of the government of the exporting country is essential for the treatment of the sick.

Article 21 (4) empowers the Board to ask not only the Parties to the Convention, but also non-parties and territories of Parties to which the Single Convention does not apply,²⁴⁹ to discontinue exports of the drug(s) in question. Unlike the previous narcotic treaties,²⁵⁰ the Board, under the Single Convention, may choose the states whether Parties to the Convention or not, to whom such notifications should be sent.²⁵¹ In the case of a non-party however, the Board can only expect its full co-operation in the matter. The Parties by undertaking an obligation to furnish quarterly statistics in respect of drugs coming under Schedules I and II, make the Board able to impose an embargo on all such drugs. Under the Limitation Convention the Parties were only under an obligation to submit annual reports, instead of quarterly returns, in respect of drugs falling under Group II.²⁵² The Board's position under Article 21 (4) is stronger than it is under Article 14 (2) because, since in the former case the Board's recommendation is mandatory, while in the latter, it is only recommendatory. Nevertheless, the scope of an embargo under Article 14 (2) is wider than that under Article 21(4) in that, while in the former situation an embargo may be recommended even in respect of those drugs which have not violated the regime under the Single Convention, in the latter situation an embargo can be imposed only in respect of those drugs the importation of which has been excessive, and also whereas Article 21 (4) may only stop exports to the recalcitrant country or territory, Article 14 (2) may be applied for the discontinuation of exports to or imports from the recalcitrant country or territory. It is, however,

apparent that the Board's success in invigilating the manufacture and importation of drugs depends upon the degree of co-operation the countries or territories are willing to offer.²⁵³

(c) An Evaluation of the Board

The International Narcotics Control Board is a board of experts. It is constituted of experts and is operated by experts. In order to maintain this special characteristic the range of nomination of members of the Board extends even to non-parties to the Single Convention, and thus the principle of equitable geographical representation is also observed. One of the basic qualifications for membership of the Board, which has appropriately been maintained, is that the members will not only have scientific and technical knowledge in various related areas, viz., pharmacology, chemistry, medicine etc., but also have sufficiently adequate knowledge of national and international narcotics administration. It is on this ground that a greater number of nominations by the World Health Organization may be supported. The Single Convention has made provisions for ensuring only the full technical independence of the Board in carrying out its functions.²⁵⁴ In other words, the Board does not enjoy any independence in other areas, because by its nature, all its functions are of a technical kind. Indeed it depends upon the Economic and Social Council and the General Assembly for election of its members²⁵⁵ and determination of its budget²⁵⁶ respectively. In

terms of Article 15, the Board shall prepare an annual report and submit it to the Economic and Social Council through the Commission, which may make such comments as it sees fit. The Economic and Social Council, however, in its resolution 1196 (XLII) of 16 May, 1967 adopted ²⁵⁷ further measures in order to ensure the full technical independence of the Board by granting it some degree of budgetary discretion, the scope of which is determined each year by the General Assembly.

As far as the impartiality of the members of the Board is concerned, the Single Convention, in Article 9 (2) makes an attempt to uphold this principle by providing, inter alia, that during their " term of office they shall not hold any position or engage in any activity which would be liable to impair their impartiality in the exercise of their functions." Although such a provision excludes the possibilities of the members holding any position or engaging in any activity governmental or non-governmental, ²⁵⁸ it nevertheless raises a pertinent question: is a member who has taken leave of absence from his government position, able to maintain impartiality especially when his government is involved in a situation which is tantamount to a violation of the principles of international narcotics administration? To put it in another way, since such a member will have to return to his government position, he may not for obvious reasons be willing to find against his own government during his term of office with the International Narcotics Control Board. ²⁵⁹ However, the provision of an adequate remuneration to the members of the Board ²⁶⁰ coupled with

the grant of privileges and immunities along the lines laid down in the Convention on the Privileges and Immunities of the United Nations, as approved by the General Assembly on 13 February, 1946 ²⁶¹ has strengthened the chances of ensuring the impartiality of the members of the Board.

Regarding the term of office of members of the Board, it may be observed that Article 10 (2) of the Single Convention does not foresee a situation where a member may resign before the expiration of his terms of office, ²⁶² although paragraph 5 of the same Article prescribes that " the Council shall fill such a vacancy as soon as possible and in accordance with the applicable provisions of article 9, by electing another member for the remainder of the term." ²⁶³ It may, however, be observed that the election of a new member of the Board under paragraphs 2 and 5 pre-supposes two different situations. Paragraph 2 is applicable only in those situations where an existing member of the Board resigns perhaps on the eve of the first meeting of the Board, so that there is not much of a time-lag between the submission of the resignation and the election of the successor. Paragraph 5 envisages a situation where a vacancy occurs at any time during the term of office of a member. Such a member be elected and allowed to function immediately, otherwise, the Board may not only be incapacitated from holding urgent sessions , if necessary, but also from mustering a quorum at its sessions. The same argument applies even in a situation where the Board, owing to the urgency of a matter, will prefer to send its decisions by mail or by telegraph instead of holding a session.

In so far as the functional aspect of the Board is concerned, the present Board has been given more effective power than its predecessor, i.e., the Permanent Central Board. The Board's functions have been devised in such a way as not only to help organise the national systems of administration of narcotics, but also to re-orientate them, as far as possible, along the line of an international narcotics administration. Although the Single Convention has empowered the Board to extend its activities even to countries and territories to which it does not apply,²⁶⁴ it may be advisable to assess the effectiveness of such powers of the Board, especially in relation to non-members, as between non-members and members, and also as between non-members. From the legal point of view it may be stated that the non-members are not obliged to comply with any request of the Board, whether in connection with the administration of the estimates system, or administration of the statistical returns system, or any other matter connected with the administration of the international narcotics control. Nevertheless, the Board's power to establish its own drug requirements,²⁶⁵ and hence the maximum limit of drug imports,²⁶⁶ will oblige the non-members to comply with its requests. Moreover, the Parties to the Single Convention will not be allowed to export drugs to any country/territory which has exceeded the limits set/ approved by the Board.²⁶⁷ Yet, functionally, the Board does not, nor should it, enjoy a dictatorial power, because the co-operation of governments, whether or not Parties to the Single Convention, is the basis of its successful functioning.

Although estimates drugs submitted by governments may be disregarded or amended by the Board, the governments may in their turn not only disregard such amendments made by the Board, but also may by supplementary estimates replace their own estimates and also the estimates established by the Board for them. The governments may also exercise their absolute power in allocating "special stocks" and thus hold back a large amount of drugs from the administrative jurisdiction of the Board. Despite the fact that, compared with previous drug conventions,²⁶⁸ the Single Convention has given the Board a greater scope for examination of the estimates, its failure to lay down any criterion which may be applied by the Board for examination of the estimates has left the situation unaltered.²⁶⁹ The Board has no effective control over the quantities of manufactured substances not covered by the Single Convention, nor can it effectively apply the international narcotics regime to the quantities to be used for the compounding of preparations under Schedule III. Unfinished drugs, or drugs that form only an intermediary stage in a continuous manufacturing process, are also outside the control of the Board. However, it may be observed that these failures should be attributed to the Convention rather than to the Board.

The Board is not only a watch-dog of the international narcotics control system; it also administers it. Its authority to administer the international narcotics control system has been strengthened by its having been empowered to impose sanctions upon the recalcitrant country or territory,²⁷⁰ whether or not the Convention applies to that area. The functions which the Board exercises on the basis of Article 14 and in particular under paragraph 2 of the Article,²⁷¹ although

apparently "judicial functions", are not strictly so because the recommendation of the Board under this Article is subject to confirmation by the Economic and Social Council, and indeed the Council may adopt its own recommendation on the subject. Even non-compliance with a recommendation for an embargo does not constitute a violation of the provisions of the Single Convention. The Board's authority to order discontinuance of the export of narcotic drugs to a country or territory which has exceeded its import limits under Article 21 (4), may not even be honoured by a Party, under exceptional circumstances viz., "where the export, in the opinion of the government of the exporting country, is essential for the treatment of the sick."²⁷² Although the Board in issuing an order under Article 21 (4) need not justify its action on the ground that the failure of a country to comply with the provisions of the Conventions has aggravated the narcotics problem, as it does in the case of a recommendation under paragraphs 1 and 2 of Article 14 of the Single Convention read with Article 6 of the 1972 Protocol, such an order is not of a punitive character. Yet, like the 1953 Protocol which authorised the Permanent Central Board to impose a mandatory opium embargo,²⁷³ the Single Convention has armed the present Board with such an authority. However, an organ should not be evaluated solely in terms of its power to impose sanctions. Like many other international organs, the Board as an expert body enjoys a special position and does contribute to the promotion of the international narcotics control system to a considerable extent. It is for this reason that the attention of the Board may be drawn by the Commission to any matter relevant to the functions of the Board,²⁷⁴ besides its usual functions. Broadly speaking,

the Board's functions are of an administrative, specialist and semi-judicial nature, but technically, it is an expert body, and is used and looked upon as such.

THE W.H.O. EXPERT COMMITTEE ON DRUG DEPENDENCEIntroduction

The Single Convention on Narcotic Drugs, 1961, has authorised the Commission on Narcotic Drugs to consider all matters pertaining to the aims of this Convention.²⁷⁵ One of the functions in particular which has been assigned to the Commission is to "make recommendations for the implementation of the aims and provisions of this Convention, including programmes of scientific research and the exchange of information of a scientific or technical nature."²⁷⁶ In so far as the medical aspects of addiction and addiction-producing drugs are concerned, the Commission considers the opinion(s) of the World Health Organization which is assisted by the Expert Committee on Drug Dependence.²⁷⁷ This Committee recommends, inter alia, additions to the list of substances subject to control, the examination of suspected substances for possible addiction-producing properties,²⁷⁸ the transfer of a substance from one schedule to another, and the deletion of a substance from a schedule of drugs, if necessary. The Director-General of the World Health Organization decides on the question of control of drug(s) on the basis of the recommendations of this Committee, and he communicates his decisions to the Secretary-General of the United Nations. The constant discovery of new therapeutic substances generates work for this Expert Committee; and the functioning of the international narcotics control system depends to a considerable extent on the findings of this Committee. Before,

however, assessing the role of this Committee, it is necessary to examine its structure, functions and contribution to the running of the international narcotics control system.

Although preceded by various other committees,²⁷⁹ in view of the present-day importance of this Committee in the international narcotics control system, an attempt will be made to assess the role of this Committee only, and reference to the previous committees will be made wherever necessary. Prior to 1956, the Expert Committee which had been formed to work as an advisory body to the World Health Organization and the United Nations, was known as the Expert Committee on Habit Forming Drugs. According to a report of the World Health Organization:

" During the Second Session of the Interim Commission (November 1946) the representative from China proposed the creation of an Expert Committee on Narcotic Drugs, to co-operate with the Commission on Narcotic Drugs appointed by the Economic and Social Council."

It was therefore resolved that " an Expert Committee on Narcotic Drugs, composed of five persons technically qualified in the pharmacological and clinical aspects of drug addiction, be appointed to advise the Interim Commission on any technical question concerning this subject which may be referred to it."

According to the Report of the Interim Commission to the First World Health Assembly, " the transfer of the international control of habit-forming drugs from the League of Nations to the United Nations imposed technical and advisory obligations on the Commission, for which it was necessary to appoint an Expert Committee on Habit-Forming Drugs." ²⁸⁰

The tasks of this Committee were twofold:

1. " to study those questions which might be referred to it as well as those problems which may be raised by the scientific development of the subject"; and
2. " to assist and advise the Executive Board of the World Health Organization and the United Nations in the accomplishment of those functions which had been entrusted to the World Health Organization by the international agreements as far as the control of Habit-forming Drugs is concerned." ²⁸¹

It may, however, be mentioned in this connection that the Limitation Convention made provisions for the advice of experts to the Health Committee of the League of Nations in deciding the addiction-producing capacity of a drug. ²⁸²

An Expert Committee is a committee " established to deal with a particular subject and consisting of a group of experts convened for the purpose by the Director-General." ²⁸³ Under Articles 18(c) and 38 of the Constitution of the World Health Organization, the World Health Assembly and the Executive Board have authority to establish such committees as may be considered desirable to serve any purpose within the competence of the organization.

The Structure of the Expert Committee on Drug Dependence

(a) Membership

The members of the Expert Committee on Drug Dependence are selected and appointed by the Director-General of the World Health Organization. The appointment of such members is reported to the Executive Board at its next session. Members of the Expert Committee shall remain so, until the work of the session to which they are appointed is concluded.²³⁴ An earlier termination of a session is possible at the discretion of the Director-General, if the interests of the Organization so demand.²⁸⁵ Experts are eligible for re-appointment. Appointment of experts is made on the basis of their special knowledge and experience concerning the subjects on the agenda of the sessions concerned and taking into account the need for continuity.²⁸⁶ In selecting these members the Director-General shall not only consider primarily their ability and technical experience, but also endeavour to secure adequate geographical distribution.²⁸⁷ The Director-General of the World Health Organization is also ex-officio Secretary of all expert committees, and he may delegate these functions.²⁸⁸ The Committee is convened by the Director-General, and the time and venue of each session are also determined by him. The debates of the Expert Committees are directed by a Chairman or by a Vice-Chairman, in the absence of the Chairman or in the case of his inability to carry out his functions effectively. Both of them are elected by the Committee at the beginning of each session.

(b) Privileges and Immunities Granted to Experts

Like other international civil servants, the members of this Expert Committee enjoy privileges and immunities, which have been described in Article 67(b) of the Constitution of the World Health Organization, and set forth in the Convention on the Privileges and Immunities of the Specialized Agencies, and in Annex VII thereof.²⁸⁹ The members of the Committee are required to act as international experts, and during the session of the Committee, they shall serve the World Health Organization exclusively. In order to enhance the value of their services, they are prohibited from receiving special instruction or opinions from any government or authority external to the World Health Organization.²⁹⁰ As the experts' services are obtained by the World Health Organization on an ad hoc basis, the allowance they earn during sessions is not regarded as remuneration. Presumably, during a session, they are entitled to their usual remuneration if they have not taken leave of absence from their respective employments. They are also entitled to a refund of travelling expenses incurred through attending session(s) of the Committee.

(c) Experts' Decision-Making Capacity ?

As the members of the Expert Committees may be required to cast votes on non-scientific questions, whether by secret ballot or by roll call,²⁹¹ the impartiality of a member, especially when a matter will concern his own country, may be impaired for psychological reasons. Moreover, a vote by a member against his own country may prejudice

his future nomination. It is, therefore, suggested that no question concerning a matter of non-scientific nature should be submitted to a vote at any session of the Expert Committees, and in this way the possibility of abstention by experts which has not been envisaged by the Constitution of the World Health Organization, may also be avoided. As in the case of scientific questions, which are not submitted to a vote,²⁹² in the case of questions of a non-scientific nature also, each expert should be allowed to retain and express his personal opinion, adducing reasons thereto, in the form of an individual or group report. In any event the conclusions of an Expert Committee shall not commit the organization.²⁹³ Moreover, when a draft report is under consideration, " it is far better to seek a text on which all can agree than to force certain members to subscribe to the views of a majority by means of a vote. Members are much more likely to look for a solution of their differences acceptable to all if the majority know that to force their opinion through in the face of opposition by their mere numerical superiority is considered to run counter to the spirit of the discussions." ²⁹⁴

Although structurally independent, an Expert Committee is to a considerable extent functionally under the control and supervision of the Director-General of the World Health Organization. The Director-General or his representative, may at any time make either oral or written statement(s) concerning a question which is under consideration by the Committee.²⁹⁵ Since an Expert Committee is a specialised

committee for special purposes, and since its observations should be taken only as "opinions", any action taken by such a Committee is subject to validation by the Director-General or his representative who shall be present during the proceedings.²⁹⁶ The birth and death of an Expert Committee are at the discretion of the Director-General of the World Health Organization.

Functions of the Expert Committee on Drug Dependence

Introduction

The purposes and functions of all Expert Committees in their respective fields, which have been outlined in the Regulations for Expert Advisory Panels and Committees, are primarily:

- " to review the latest knowledge and expert information and make it available to the organization";
- " to formulate technical recommendations"; and
- " to make recommendations designed to initiate, stimulate and co-ordinate research necessary for the fulfilment of their terms of reference".²⁹⁷

The functions of the Expert Committee on Drug Dependence will very much depend upon the connotations of the term "Drug Dependence". "Drug Dependence", according to one Expert Committee, is a state of "psychic and sometimes also physical"²⁹⁸ (dependence), resulting from the interaction between a living organism and a drug, characterised by behaviour and other responses that always include a compulsion to

take the drug on a continuous or periodic basis in order to experience its psychic effects, and sometimes to avoid the discomforts of its absence." ²⁹⁹ Tolerance may or may not be present. A person may be dependent on more than one drug. ³⁰⁰ The incidence of "drug dependence" is closely connected with the question of controlling the production and distribution of dependence-producing drugs, especially because the easy availability of drugs very often contributes to drug dependence. This Committee, in its Sixteenth Report, ³⁰¹ recognising the importance of international control of drugs, concluded that the need, type and degree of international control must be based on two considerations: (a) the degree of risk to public health and (b) the usefulness of the drug in medical therapy. The W.H.O. Expert Committee on Drug Dependence had been established in order to give the World Health Organization, inter alia, expert information on the pharmacological effect of drugs covered by the international narcotics treaties, and on the question of extending control to new drugs or exempting drugs from control, being guided by the above mentioned considerations. ³⁰² The Committee categorically mentioned that "chemical or pharmacological classifications cannot, however, be used as the basis for determining the need for control nor the type of control required." ³⁰³ Such an Expert Committee's functions are manifold. Although apparently a technical committee, its recommendations have a bearing upon the entire international narcotics control system in that it gives prior notice to the control authorities by examining the potential risk of abuse

and illicit traffic in certain kinds of drugs. Its functions may be broadly divided under the following headings:

- (a) To consider the dependence liability of a drug and to determine the level of control;
- (b) To classify drugs in accordance with the level of control required;
- (c) To suggest remedies to problems of dependence on drugs; and
- (d) Miscellaneous functions.

(a) To Consider the Dependence Liability of a Drug and to Determine the Level of Control

The reasons for determining the dependence liability of a drug are obvious. There are many drugs which, if taken into the body, will produce in some persons a satisfying effect to such a degree that they will continue the use of such drugs even to the point of abuse or dependence. Also " if the drug dependence is associated with behavioural or other responses that adversely affect the user's interpersonal relations or cause adverse physical, social or economic consequences to others as well as to himself, and if the problem is actually wide-spread in the population or has a significant potential for becoming widespread, then a public health problem does exist." ³⁰⁴ It is for the determination of these points that the W.H.O. Expert Committee on Drug Dependence comes into operation. In its Sixteenth Report, the Committee indicated the criteria for determining the need for control. " There are two main conditions, at least one of which must exist for a drug to be considered in need

of control:

- (1) the drug is known to be abused other than sporadically or in a local area and the effects of its abuse extend beyond the drug taker; in addition, its mode of spread involves communication between existing and potential drug takers, and an illicit traffic in it is developing; or
- (2) it is planned to use the drug in medicine and experimental data show that there is a significant psychic or physical dependence liability; the drug is commercially available or may become so.³⁰⁵

If neither of these conditions is fulfilled, there is no need for an agent to come under consideration for control." ³⁰⁶ The Eighteenth World Health Assembly, in recommending various measures (e.g. health education, placing of drugs not under international control on prescriptions etc.), referred to the recommendations of the W.H.O. Expert Committee on Dependence Producing Drugs, concerning the need for the control of certain sedatives and stimulants.³⁰⁷ The Expert Committee performs of a technical nature. In its Thirteenth Report the W.H.O. Expert Committee on Addiction Producing Drugs, in considering the dependence liability of a drug, recommended that the term " drug dependence" should be substituted for the terms "drug addiction" and " drug habituation" . "Drug abuse", according to this Committee, " is the consumption of a drug apart from medical need or in unnecessary quantities. Its nature and significance may be considered from two points of view: one relates to the interaction between the drug and the individual , the other to the interaction

between drug abuse and society. The first viewpoint is concerned with drug dependence, and the interplay between the pharmacodynamic actions of the drug and the physiological and psychological status of the individual. The second- the interaction between drug abuse and society- is concerned with the interplay of a wide range of conditions, environmental, sociological and economic." ³⁰⁸ In fact, the Committee's recommendation as to whether or not a drug should be included in the international control regime has been guided by the above factors. The Committee also emphasised that the terms "sedatives" and "stimulants" should "include any drug that has been found to be dependence-producing and shown to be abused because of its sedative or stimulant effects on the central nervous system, but excluding alcohol and substances under international narcotics control." ³⁰⁹ Realising that the expression "dependence-producing drugs" should be made relevant not only to a few specified drugs, and also realising that the national efforts in controlling drug abuse were insufficient, it emphasised the need for the control of such drugs. ³¹⁰ It also observed that any chemical or pharmacological classification was found to be unsuitable as a scientific basis for determining the need for control of drugs. ³¹¹ The Committee also suggested that, apart from the consideration of (a) the degree of risk to public health and (b) the usefulness of the drug in medical therapy, the international narcotics control system should embody the following principles:

- (a) " the provisions should be flexible, so that a drug can readily be placed under appropriate control if knowledge indicates that this is desirable; and

- (b) there should be provision for making even the most dangerous substances available for scientific research, when justified, but only under appropriate safeguards." 312

In view of the desirability of varying levels of control, the Committee even suggested that certain drugs which apparently present a lower degree of hazard,³¹³ or substances which have no accepted use in medical practice but carry a high degree of hazard to public health,³¹⁴ should also be included. It also pointed out that, in general, each substance would require individual evaluation before recommendations concerning the level of control could be made.³¹⁵ That an expanded description of drug-dependence of various types would be necessary had been confirmed by a group of experts, who observed, inter alia, that "it has become impossible in practice, and is scientifically unsound, to maintain a single definition for all forms of drug addiction and/or habituation. A feature common to these conditions as well as to drug abuse in general is dependence, psychic or both, of the individual on a chemical agent. Therefore, better understanding should be attained by substitution of the term drug dependence of this type or that type, according to the agent or class of agents involved in discussions of these conditions, especially interdisciplinary. Short descriptions, followed by concise listings of their characteristics, are formulated for the various types of dependence on at present widely abused major groups of substances." 316

However, it is on the basis of the criteria discussed above that the Expert Committee of the W.H.O. gives its recommendations on the

desirability of control of a drug, and indeed, the Commission on Narcotic Drugs³¹⁷ have so far accepted almost all the recommendations of the W.H.O. Expert Committee on Drug Dependence.³¹⁸ The Expert Committee not only gives its recommendations on the dependence liability of a new drug,³¹⁹ but also reviews the chemical structure of a drug which had been considered previously.³²⁰ The recommendations of the World Health Assemblies in this regard to the Secretary-General of the United Nations are based on the report/recommendations of the Expert Committees.³²¹ The W.H.O. Expert Committee's opinions on many provisions of the Revised Draft Protocol on Psychotropic Substances had been found to be significant by the Economic and Social Council.³²² With reference to this Convention the Committee expressed the view that " (a) the degree of risk to public health presented by a dependence-producing drug and (b) its usefulness in medical practice are primarily matters of medical assessment and judgment and that this is also true of decisions on the need for and level of control." ³²³ The Committee also advocated the inclusion of treatment and rehabilitation of drug addicts as an alternative arrangement to "penal measures" and this has been expressed in the Convention on Psychotropic Substances, 1971, and which may be considered as an improvement upon the provisions of Article 36(1) of the Single Convention on Narcotic Drugs, 1961.³²⁴

(b) To Classify Drugs in Accordance with the Level
of Control Required

The recent classification of drugs made by the Expert Committee on Drug Dependence is primarily based on the recommendation of the previous W.H.O. Expert Committees.³²⁵ However, the W.H.O. Expert Committee on Drug Dependence, in determining the basis for classification of drugs in accordance with the level of control required, re-affirmed the criteria for determining the need for control, which had previously been advocated by the Committee in its Sixteenth Report,³²⁶ i.e.,

1. " The drug is known to be abused other than sporadically or in a local area and the effects of its abuse extend beyond the drug taker; in addition, its mode of spread involves communication between existing and potential drug takers, and an illicit traffic in it is developing."
2. " It is planned to use the drug in medicine and experimental data show that there is a significant psychic or physical dependence liability; the drug is commercially available or may become so."

Also, the Committee re-iterated that the " need, type and degree of international control must be based on two considerations:

- (a) the degree of risk to public health; and
- (b) the usefulness of the drug in medical therapy.

The Committee also re-emphasised that, in embodying any principle in this regard, it would be desirable to adopt flexible provisions so that a drug can readily be placed under appropriate control, if new

knowledge indicates that this is desirable, and also that " there should be provision for making even the most dangerous substances available for scientific research, when justified, but only under appropriate safeguards." ³²⁷ On the basis of these principles, the Committee, in its Sixteenth Report, recommended that the existing drugs should be classified into five groups. ³²⁸ The following year, however, in reviewing the classification of psychotropic substances not under international control, it agreed ³²⁹ for the most part with the proposed five groups, except that a sub-division of group (b) ³³⁰ into two sub-groups was proposed " in order to give greater recognition to the criteria, the degree of risk to public health", and " the usefulness of the drugs in medical therapy", ³³¹ and also that the purposes of the proposed group (e) (" to alert governments to a potential but low degree of hazard, to encourage them to monitor the use of such drugs and report instances of abuse") would be better achieved by finding alternative machinery. The Committee found support for its decision to omit group (e) from classification, in that drugs under that group present only a very low risk of creating drug dependence or related abuse, and also in that " they would have already required a medical prescription in most countries." ³³²

The total number of groups which remained at five, were the following:

- (a) " drugs having liability to abuse constituting an especially serious risk to public health and having very limited, if any, therapeutic usefulness";

- (b) " drugs whose liability to abuse constitutes a substantial risk to public health and having little to moderate therapeutic usefulness"; (sub-division of group 'b')
- (c) " drugs whose liability to abuse constitutes a substantial risk to public health but having moderate to great therapeutic usefulness"; (sub-division of group 'b')
- (d) " drugs whose liability to abuse constitutes a smaller but still significant risk to public health and having a therapeutic usefulness ranging from little to great"; and
- (e) preparations of drugs, contained in groups (b), (c) or (d) " but compounded with non-dependence producing ingredients in such low concentrations or in such other manner as to render their abuse unlikely and to make recovery of the ... (controlled) ingredient very difficult." 333

In determining these criteria, the Committee not only gave consideration to the broad nature of the control deemed appropriate to each group, but also stressed that it would be most appropriate to classify them primarily on the basis of "hazard" and "usefulness" 334. Nevertheless, since there were considerable variations in the quantity and quality of the data available to it on the degree of risk to public health, owing to variations in the extent of work done on a particular drug, the Committee experienced difficulties in performing this work.

However, being aware of the difficulty, it compiled technical data very extensively in order that a conclusion might be arrived at by conducting experiments on various variables.³³⁵ It should be mentioned in this connection that owing to considerable variations in the quantity and quality of data available on the drugs under consideration, the Committee found it necessary to make a distinction between "drugs recommended for control" and "analogous drugs". It was also for the same reason that the drugs originally categorised under group (b) had been sub-divided into two parts: (i) "those drugs about which the evidence supporting a recommendation for control was judged to be clear and unequivocal; and (ii) drugs for which there was insufficient evidence to permit a firm recommendation to be made but whose inclusion in the group was believed to be justified by analogy."³³⁶ The expression "by analogy", according to the Committee, implies that "with respect to chemical structure, pharmacodynamic properties, therapeutic indications, or routes of administration, these drugs showed such close similarities to the "drugs recommended for control" that they were believed to be likely to present a comparable combination of risk to public health and therapeutic usefulness."³³⁷

On further examination, it appears that this classification of drugs had been designed to cover all possible classes of drugs, not only on the basis of their liabilities to abuse (i.e., low risk, or inordinate risk or substantial risk), but also on the basis of their therapeutic usefulness. What is, however, noticeable is that this classification included even preparations of drugs "compounded with non-dependence-producing ingredients in such low concentrations or

in such other manner as to render their abuse unlikely to make recovery of the ... (controlled) ingredient very difficult." ³³⁸ It was on the basis of these classifications that the Expert Committee prescribed a chart suggesting types of control for drugs by groups. ³³⁹ The last group, i.e., preparations of drugs compounded with non-dependence producing ingredients in concentrations etc. does not appear on this chart, as in the opinion of the Committee, "control of such preparations would be less strict than for those in group (d)." ³⁴⁰

In regard to preparations, the Committee also suggested that if a preparation was found to contain one or more controlled drugs, it should be subject to the same control as applicable to the "most controlled" drug in that preparation. ³⁴¹ Should, however, the controlled drugs involved bear similarities with the drugs classified under group (d), then the resulting preparations would be included in that group, and be subject to controls suggested for it. Controls suggested for drugs categorised under group (a) should be extended to all preparations of these drugs. The preparations of a drug categorised under groups (b), (c) or (d) should also be subject to a greater degree of control than the basic drug itself, if the preparation was liable to more abuse amounting to a substantial risk to public health. All new preparations alleged to have contained non-dependence-producing ingredients would presumably come under group (e) unless otherwise proved. ³⁴²

The Committee's recommendations also extended to dependence-producing psychoactive drugs not previously under control. In respect of these drugs, it suggested that they should be put under a period of grace for 3 or 4 years during which time preparations containing

(b) or (c) drugs would be subject to a lower level of control, or no control. Should it be intended however to continue such a preparation beyond the period of grace, an application supported by balanced and objective evidence would be required to be made. If the application were granted, the preparation would be included in group (d).³⁴³ In 1973 the Expert Committee on Drug Dependence confirmed that the Convention on Psychotropic Substances was, in large measure, in conformity with the suggestions previously advanced by this Committee in this regard.³⁴⁴ It may also be observed in this connection that the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, had received considerable support from the Expert Committees on Drug Dependence in the matter of international control of narcotic drugs, viz. (a) "to limit the cultivation, production, manufacture and use of drugs to the amount required for medical and scientific purposes" (e.g. Articles 2, 9 and 11); (b) "the increased responsibilities and authority given to the International Narcotics Control Board to help achieve these ends" (e.g. Articles 6, 7 and 11); (c) the provisions requiring parties to "take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social re-integration of the persons involved" (Article 15); and (d) "the authorization in lieu of, or in addition to, conviction and punishment of drug-using offenders" (Article 14).³⁴⁵

The classification of drugs by level of control required, as suggested by the W.H.O. Expert Committee on Drug Dependence, appears to be quite comprehensive. The Committee's recommendations offer a

constructive guide to the U.N. authorities in their efforts to control illicit traffic in drugs. How far the U.N. authorities accept the recommendations of the Expert Committees, which are forwarded by the W.H.O., has been examined in a subsequent Section of this thesis.³⁴⁶

(c) To Suggest Remedies to the Problems of Dependence
on Drugs

This aspect of the Expert Committee's function is varied and vast. There are as many suggestions for remedies as there are problems. In its Fourteenth Report, the W.H.O. Expert Committee on Dependence-Producing Drugs, endorsed the observation of the Advisory Panels that, in view of the "continuous appearance of new agents with dependence-producing properties, the changing pattern of drug use and abuse, and the changing attitude towards and procedures of handling drug-dependent patients, narcotics control authorities should recognize the need for continuous technical advice, particularly as to medical aspects. In a few instances, control authorities are seeking such advice by the setting up of panels of independent and unbiased specialists. Such panels should also perform useful service in fact-finding with respect to the occurrence of drug-dependence, adequacy of treatment programmes and surveillance of abuse liabilities of new agents."³⁴⁷ The Committee also recommended the wider utilisation of technical advice wherever feasible.

As a part of its wide-ranging functions concerning drug-dependence, the Committee advocated an international drug-monitoring

programme,³⁴⁸ in the expectation that early indication of drug abuse, especially of new agents, would help identify the characteristics of such abuse. It also hoped that valuable information on the epidemiology and regional occurrence of drug abuse and drug dependence of different types should also result.³⁴⁹ This programme was not only accepted by the W.H.O., but also in recognition of its merits, a meeting on international drug monitoring was convened by it in Geneva in November, 1968. The objectives of drug monitoring, as suggested by this meeting, should have two major aspects: " firstly, to establish the frequency and incidence of adverse reactions, both well-recognised, or newly discovered, in relation to the use of a drug, and secondly, to detect serious and unexpected adverse reactions as early as possible." ³⁵⁰ Instead of going into the details of this programme, it may be mentioned that this meeting apparently discussed most of the major problems that would be confronted in implementing the programme; and the key to the success of this programme, as was pointed out at the meeting, would be the co-operation of the various national authorities through national centres in their territories.³⁵¹ Further, a meeting on the role of national centres in international drug monitoring was convened by the World Health Organization in Geneva in September, 1971. This meeting provided guidelines for countries wishing to establish national centres for drug monitoring to improve the position of the existing national centres and also to identify the contributions that such national centres should make to the international system. As guidelines, the Committee suggested,

inter alia, the need for improved methods of collection of health statistics and drug utilisation data and for more effective analysis of input data, by raising the standard of reports and collaboration between national centres through the international system.³⁵²

The World Health Organization also enjoys the benefit of the recommendations of the Expert Committee on the prevention and treatment of dependence on drugs. A W.H.O. Expert Committee on Mental Health met in Geneva in October, 1966 to consider this problem.³⁵³

The international importance of this problem had been pointed out by a previous W.H.O. Expert Committee on Mental Health.³⁵⁴ The Committee which in 1966 re-emphasised that it was essential to make attempts to induce authorities to consider the problems of alcohol and alcoholism and the use and abuse of drugs together, primarily because of similarities in the "causation and treatment of the problem involved", and also because alcohol and other drugs are often used in combination.³⁵⁵ The Committee also emphasised, inter alia, (a) that it was imperative to adopt a multi-disciplinary approach to the solution of this problem; (b) that wherever possible, services for addicts, alcoholic or otherwise, should be a part of the existing health services; (c) that where legal prescriptions of drugs find their way into illicit traffic, perhaps because of the establishment of a pattern of prescriptions, it would be advisable to correct the situation by recourse to a special body, e.g. a medical society or a non-medical council, instead of to court procedure; (d) that close co-operation between treatment and rehabilitation services on the one hand and police and courts on the other, is imperative;

(e) that "medico-legal measures are essential in the prevention and control of dependence on alcohol and other drugs, but it should be kept in mind that reasonably successful control of one agent often, in fact usually, leads to the emergence of another agent as a substitute"; and (f) that not only training programmes and further research and educative programmes should be adopted by nations, but also that an inter-organizational approach would be necessary in dealing with problems concerning dependence on drugs.³⁵⁶

The "combined approach" and monitoring of adverse drugs reactions in dealing with problems concerning dependence on drugs received particular confirmation by the W.H.O. Expert Committee on Drug Dependence which met in Geneva in 1968.³⁵⁷ In fact, the majority of the recommendations made by the earlier W.H.O. Expert Committees concerned with drug dependence had been accepted by the Commission on Narcotic Drugs.³⁵⁸ In appreciation of the nature of the problem of drug dependence, the World Health Organization reviews the situation from time to time through the Expert Committees. In 1970, another Expert Committee on Drug Dependence met in Geneva (August 25th to 31 st. In considering the principles of management of drug- dependence problems, it not only confirmed the utility of the recommendations in this matter, of which the principal ones related to the determination of the etiological factors in drug dependence,³⁵⁹ the adoption by the national authorities of therapeutic and preventive programmes in accordance with their technical and economic capabilities, and the prohibition of maintenance programmes³⁶⁰ for patients depending upon drugs of various kinds, without strict controls and strict supervision

by trained medical personnel, but also pointed out the following: that absolute legal control prohibiting the use of specific drugs may not necessarily produce the desired effect, since it may lead to the introduction of other drugs, that it is important to utilise opportunities for scientific observation and data collection, and lastly, that a community approach to the problem would be more fruitful.³⁶¹ As has been stated before, almost all the recommendations of the W.H.O. Expert Committee on Drug Dependence have, in practice, been accepted by the Commission on Narcotic Drugs in their efforts to abolish traffic in narcotic drugs and to rehabilitate drug addicts.³⁶²

(d) Miscellaneous Functions

Expert Committees are appointed to examine and make recommendations upon various matters concerning international health. A consideration of some of these matters necessarily gives rise to further problems, and therefore, Expert Committees also are requested to give their recommendations on matters relevant to the main topic for which they have been appointed. In so far as the W.H.O. Expert Committees on Drug Dependence are concerned, of the matters so far considered by them, mention should be made of the following:

(i) Coded Information on Narcotics

The basic idea behind this programme is to establish a central source of information on all possible aspects of drug dependence. This was originally advocated by the W.H.O. Expert Committee on Addiction Producing Drugs in 1957,³⁶³ and supported by subsequent

Expert Committees.³⁶⁴ In 1973, the W.H.O. Expert Committee on Drug Dependence re-emphasised the importance of this matter, and opined that to ensure an effective coverage of information sources and to avoid duplication of work an improved method of co-ordination of various efforts made in this regard would be necessary. The Committee considered that the "convening of meetings of persons actively interested in systems for the storage and retrieval of data in the field might be an important means of stimulating co-ordination and co-operation."³⁶⁵

(ii) Treatment of Drug Addicts and their Rehabilitation

Certain general principles of treatment for narcotic addicts had been recommended in 1957 by a W.H.O. Study Group.³⁶⁶ The W.H.O. Expert Committee on Drug Dependence gave its full support to these recommendations except that complete abstinence from the use of dependence-producing drugs was not found by it to be the only criterion by which the effectiveness of therapy should be evaluated. According to this Committee, it must be assessed also in terms of the patient's mental state and his social and economic adjustment.³⁶⁷ It also emphasised the need for individual care and attention in accordance with the characteristics of the patient, which are determined by his environment, socio-cultural setting, and the pharmacodynamics of the drug or drugs involved.³⁶⁸ As a means of attaining a comprehensive method of treatment and rehabilitation with effective long-term

follow-up and supportive services, the Committee, in addition to its support for a multi-approach towards treatment, recommended, inter alia, the following:

- (a) utilisation of resources and skills from the fields of medicine, psychology, sociology and even law;
- (b) the seeking of full collaboration from each patient's family and recognition of the factors that influence various persons and groups with respect to their drug-taking behaviour before and after some experience with dependence-producing drugs; and
- (c) attention to the natural history of various types of drug dependence.³⁶⁹

These recommendations were again confirmed subsequently by the Expert Committee,³⁷⁰ and indeed, the Single Convention in Article 33 made provisions for the treatment of drug addicts, including their rehabilitation. Incidentally, the U.N./Thailand Programme for Drug Abuse Control in Thailand, which had been financed by the United Nations Fund for Drug Abuse Control, also contained provisions for the treatment of addicts and for their rehabilitation similar to those previously recommended by the W.H.O. Expert Committee. The work plan for this project, for which W.H.O. and the International Labour Organization were primarily responsible, sought to improve available treatment facilities by providing material, research and training assistance.³⁷¹ In its Twentieth Report, the W.H.O. Expert Committee on Drug Dependence once again emphasised that the "aid of traditional educational, health and social welfare institutions and also less

traditional contact, consulting, crisis and emergency services should be especially enlisted in helping persons involved in problems related to drug taking to find assistance appropriate to their needs."³⁷²

(iii) Education and Training Programmes

The necessity of a comprehensive education and training programme, as complementary to the total programme of abolition of the drug problem was very strongly emphasised by the W.H.O. Expert Committee on Mental Health.³⁷³ This Committee stressed, inter alia, that it is evident that " any educational programme must give primary attention to local circumstances, with particular reference to the drugs ... used predominantly in the country and the degree to which such drug-usage creates a problem, together with a consideration of the local customs, attitudes, predominant mores and institutional patterns." ³⁷⁴ In order to fulfil these ends, the Committee advocated professional training courses with a multidisciplinary approach, health education and a pragmatic and interdisciplinary research programme.³⁷⁵ In order to lay the foundation for successful research, it stated the necessity of well-qualified personnel, and tools, i.e., improved methods for prompt publication, data storage and retrieval, evaluation of significant findings and dissemination of information,³⁷⁶ and a central international body, possibly under the auspices of the W.H.O.³⁷⁷ The importance of such programmes was also reconfirmed by the W.H.O. Expert Committee on Drug Dependence.³⁷⁸ However, a subsequent W.H.O. Expert Committee

pointed out that information-giving educational programmes alone would not be sufficient for the purpose of curing drug-dependence. "The general public", this Committee observed, "should be well-informed so as to allow the promotion of the necessary legislative, preventive and management programmes... Educational measures may be directed towards changing the attitudes of the community not only towards the use of dependence-producing drugs in particular, but also towards the use of drugs in general."³⁷⁹ It also suggested that advanced techniques would be needed for the population "at risk" of becoming drug-dependent, and that the school class may be developed as a special form of the "therapeutic community". In addition to these, a community approach would be, in the opinion of this Committee, very effective.³⁸⁰ The U.N./ Thai Programme for Drug Abuse Control in Thailand also contained provisions for a narcotics information and education sector, with a view to launching programmes of public information and preventive education on narcotic drugs and psychotropic substances and the consequences of their abuse. In the implementation of this programme, the assistance of the W.H.O. and the U.N.E.S.C.O. was found to be essential.³⁸¹

In its Twentieth Report,³⁸² the W.H.O. Expert Committee on Drug Dependence made efforts to ascertain the known and unknown areas concerning problems of prevention associated with the use of psycho-active dependence-producing drugs, when taken in a manner unrelated to acceptable medical practice.³⁸³ In formulating its reports this Committee emphasised the urgency of taking preventive action, not only with regard to the above-mentioned kinds of drugs, but also with

regard to the problem of the non-medical use of drugs. In suggesting measures³⁸⁴ for the prevention of drug abuse, the Committee urged that it would be necessary to "eliminate ignorance and misconceptions about drug effects", to "modify broad and immediate socio-cultural mores in such a way as to discourage actively the inappropriate use of drugs..." and to "improve understanding of the causes of problems associated with the non-medical use of dependence-producing drugs, and of the effectiveness of various approaches and techniques in preventing these problems." ³⁸⁵ This Committee, in suggesting its plans, found the necessity of maintaining a distinction between "information" and "education" on drugs, and in doing so, it referred to the definitions of these terms as suggested by the Meeting on Education in More-Developed Countries to Prevent Drug Abuse, which had been convened in 1972 under the auspices of the U.N.E.S.C.O.

"Drug information is a form of communication which simply imparts factual knowledge or transmits cognitive learning. It is a fairly limited process in which the main elements are usually information concerning drugs themselves and their (harmful) effects upon peoples, along with instruction regarding specific drug-control legislation and other forms of social control. Drug education, on the other hand, is a broad range of concerted activities relating to teaching/ learning situations and experience which attempts to maximize opportunities for the intellectual, emotional, psychological and physiological development of young people." ³⁸⁶ While information is a one-way activity, education involves a two-way communication, i.e., expressions of

feelings, group discussions and conferences or psychotherapy. Such education should aim at the decision-making skills, the classification of values and their transformation into action, and the development of coping skills.³⁸⁷ Monitoring the environment and social control³⁸⁸ should also be a part of such a programme.³⁸⁹ However, the Committee itself pointed out that the effectiveness of drug education programmes has not yet been adequately evaluated.³⁹⁰ Moreover, a series of successful experiments will be necessary to confirm the validity of such programmes. Yet, like any other programmes of this nature, their success depends upon the co-operation of national governments.

Relationship between the World Health Organization and
the Commission on Narcotic Drugs in the International
Control of Narcotic Drugs within the Framework of the
United Nations

The views of the W.H.O. as to whether or not a substance warrants control owing to its habit-forming or addiction-producing content, are primarily based upon the opinion of the Expert Committee on Drug Dependence. The opinions of the W.H.O. on a substance are forwarded to the Secretary-General of the United Nations, and are primarily considered by the Commission on Narcotic Drugs. The World Health Organization in giving its views on the question of de-control of a substance follows the same procedure, but the decisions, whether provisional or final, concerning application of the control régime,

or withdrawal of the control régime in respect of a substance, emerge through different systems.

Article 3, paragraph 4 of the Single Convention permits the Commission to exempt a preparation from certain measures of control³⁹¹ (i.e., add this preparation to Schedule III) if:

- (a) that "preparation because of the substances which it contains is not liable to abuse and cannot produce ill effects"; and
- (b) that "the drug therein is not readily recoverable."

But according to paragraph 4, such findings will have to be submitted by the W.H.O. for consideration by the Commission on Narcotic Drugs. Any such finding of the W.H.O. has the support of an Expert Committee. Although the Commission may refuse to act in accordance with the recommendation of the W.H.O., in the event of its conforming to the recommendation of the W.H.O., it must do so without any reservation.

In so far as decisions, whether provisional or final, concerning the inclusion of a substance in the control régime are concerned, the Single Convention has brought in certain new features. Article 3 of this Convention has given the Commission authority to take both provisional and final decisions as to the addition of a new substance to the relevant Schedule whereas under the International Opium Convention of 1925³⁹² and the Limitation Convention of 1931,³⁹³ decisions on such matters were taken only by the World Health Organization. The 1948 Protocol gave the Commission authority for provisional control only, and the authority for final decisions lay

with the World Health Organization.

Even though under the Single Convention, changes in its Schedules, where necessary, are in the exclusive competence of the Commission on Narcotic Drugs, such changes can be made by the Commission only in accordance with the recommendations of the W.H.O., and provided also that such changes have first been recommended by the latter organisation. The Commission can, however, refuse to comply with such recommendations of the World Health Organization.³⁹⁴

The Convention on Psychotropic Substances, 1971, has endowed the Commission with greater powers than those enjoyed by it under the Single Convention. In so far as the deletion of a substance from a Schedule or its transfer from one Schedule to another or its addition to a Schedule is concerned, the Commission, under this Convention, can accept or reject the recommendations of the W.H.O.³⁹⁵ In other words, the Commission's decision in this matter, which is presumably based on "economic, social, legal, administrative and other factors", that it may consider relevant, shall override the medical and scientific opinion rendered by an Expert Committee.³⁹⁶

Yet the Commission, which is a political body, may also be taken as an expert body. The question of control of a narcotic substance deserves considered treatment not only from the medical and scientific standpoints, but also from others, such as, social, economic, legal and administrative etc. It is immaterial to dwell upon who dominates whom; the modus operandi, in this context, is best explained by resort to the maxim lex plus laudatur quando ratione probatur.

"Reason" warrants a consideration of the surrounding relevant factors

also, and such relevant factors can best be considered by a joint effort between the institutions concerned. It is believed that the Commission, in coming to its decision in this matter, does not wish to disregard the opinions of the W.H.O., which are based on the observations of an Expert Committee.

Comments

An expert committee, such as the W.H.O. Expert Committee on Drug Dependence, is a specialised committee within another specialised body.³⁹⁷ The merits of obtaining the service of individual experts who constitute such a body, however temporary it might be, are controversial.³⁹⁸ The use of experts, whether in their individual capacities, or as government representatives,³⁹⁹ was found to be a preferred method of considering any matter of a technical nature during the U.N. period. In many cases experts are government servants or government representatives (e.g. the Food and Agriculture Organization and the U.N.E.S.C.O. decided in 1947 and 1954 respectively to transform their executive boards into organs of government representatives). While government servants and/or representatives are very likely to be bound by the general policies of their respective governments, independent experts are very much less likely to be so. However, the value of the argument in favour of independent experts depends " on the task of the organ concerned. It is considerable if the organ works in opposition to the Member States, if it has to supervise

them or if it prepares decisions which will bind them. But the argument is weaker if the organ is charged with a co-ordinating function, if it has to try to bring the States together in a common line of policy."⁴⁰⁰ On the other hand, it is thought that the impartiality of experts may be maintained to a greater extent if they are appointed by an organ itself instead of by a member of the organ, because in the latter case democratic principles may not be observed in the choice of experts.⁴⁰¹ However, experts selected on their own merits, may individually make attempts to exert some influence or even, as an expression of patriotism, uphold the attitude of their respective governments. Therefore, although government representatives are expected to maintain a consistent policy, they are government agents; indeed independent experts, as Schwarzenberger at one time observed are more often than not "either only government agents in disguise or tend to be more Popish than the Pope."⁴⁰² Owing to this controversy, a third proposal which has been suggested by some authorities is that expert committees should be constituted of semi-independent persons because those who are "partially independent can probably co-operate better and will succeed more easily in achieving compromises than government representatives who are under instruction to support one of the two parties."⁴⁰³ Any attempt to devise a completely satisfactory method of constituting an expert committee seems bound to meet with disappointment. What, however, appears to be reasonable to expect of the experts, is that they maintain their integrity and impartiality above their chauvinism,⁴⁰⁴ as befitting their sense of responsibility.

The W.H.O. Expert Committee on Drug Dependence basically conforms to the pattern of a normal Expert Committee. But this Committee is free from the problem of representation of interest groups, and consequently, the inevitable vices of "interest groups" do not cripple it in its proper functioning. Owing to the nature of the work it performs, politics should not be its working guide; adequate geographical representation is, however, worthy of support, especially in view of the nature of the commodities it deals with, and the related consequences thereof. Equal representation of the producer and consumer countries on such a committee is also found to be necessary in an effort to maintain the democratic principle. The political considerations should not have an overriding influence over the work for which the members are appointed. As Loveday very appropriately observed, the "loyalty (of such personnel)" must spring from an understanding of and a belief in the ultimate value of the work and purposes of the institution."⁴⁰⁵ It is a sharp-shock universalism and impartiality they have to maintain; a real esprit de corps should prevail in a multi-national team, the uniting factors being their impartiality and a common purpose. It is also the responsibility of the appointing authority to help create a real esprit de corps by electing the right kind of experts.⁴⁰⁶ The W.H.O. Expert Committee on Drug Dependence could become a typical expert committee, with considerable esprit de corps, however short its span of life may be, if appropriate alterations were to be made in its structure. The risk of morale being affected by scepticism arising

from lack of understanding in respect of such a committee should be slight, because there should be no fear of competition amongst experts. There is no primus inter pares in such a committee, and nationality does not determine the status of any expert. Their purpose is to advise collectively, and not to decide, although advice, at times, may take the form of a recommendation. Like many other expert committees, the W.H.O. Expert Committee on Drug Dependence is not a standing advisory committee;⁴⁰⁷ it is more like an ad hoc committee.⁴⁰⁸ Its functions are not of an academic nature; they are truly practical. Its terms of reference also, for obvious reasons, are not very extensive. Since it is not a policy-making committee, it should not be polluted with politics, and hence should be treated with respect.

PART III

FOOTNOTES

1. See further K.J. Twitchett, "The International Drama: The United Nations on the World Stage" in The Evolving United Nations: A Prospect for Peace? (K.J. Twitchett ed.), 1971, p. 14 ; see also Susan Strange, "The United Nations and International Economic Relations" in the aforesaid publication, pp. 100-119.
2. S. Strange, op. cit., p. 102.
3. See also League of Nations, Report of Economic and Financial Committees. : Commercial Policy in the post-War World, p. 33.
4. S. Strange, op. cit., p. 103
5. See further W. Friedmann, The Changing Structure of International Law, 1964, p. 62.
6. G. Schwarzenberger, International Law and Order, 1971, pp. 19-20

Chapter V

7. 11 December, 1946.
8. Resolution of the first session of the Economic and Social Council, Official Records, ECOSOC, 1st session, 1946, vol. I, p.168; see also U.N. General Assembly, 1st session, Plenary Meeting, 1946, Official Records, vol. 4, p. 986 et. seq.,
9. See "The United Nations and the Fight Against Drug Abuse", U.N. Publication, 1972, p. 13.
The Paris Protocol was the outcome of the study directed to determine the procedure necessary for bringing the new synthetic drugs under full international control, which was initiated by the Commission on Narcotic Drugs at its first session in November- December, 1946.
10. U. N. Doc. E/CN.7/471, p. 3.
11. infra., ¶. 501-504
12. Dr. Bowett has described this type of commission as functional commissions. See D. Bowett, "The Law of International Institutions", 1970, p. 69.
13. Although Article 68 of the U.N. Charter provides that the "Economic and Social Council shall set up commissions in economic and social fields", the term "Commissions" can be extended to include such programmes and/or bodies which it may set up for the promotion of its avowed objectives.

14. Article 71 of the U.N. Charter
15. *infra.*, Chapter XII
16. D.W.Bowett, *op. cit.*, p. 63.
17. *infra.*, ¶. 790-796
18. Nowhere in the U.N. Charter has the Economic and Social Council been empowered to abolish a committee/commission created by it, although the provision of Article 68, by implication, seems to have conferred this power upon it.
19. See further W.A. Lewis, "The Economic and Social Council" in The United Nations: the First Ten Years, B.A.Wortley (ed.), Manchester University Press, 1957, pp. 34-46.
20. Governments and the public at large.
21. See Report of the International Narcotics Control Board on its work in 1970, U.N. Doc. E/INCB/9, p. 1. As for example, the Board, through its report in 1970, drew the attention of the Council to the fact that the Conference on Psychotropic Substances would recommend governments to implement the Protocol even before its proposed coming into force because of the gravity of the situation. The Board also suggested certain remedial measures concerning this matter.
22. See further L.M. Goodrich & E. Hambro, Charter of the United Nations: Commentary and Documents, Columbia University Press, 1949 (2nd edition), p. 385.
23. See further Goodrich & Hambro, *op. cit.*, p. 384; see also ECOSOC Resolution, E/437, p. 42.
 - "1. Assistance to Member Governments in obtaining information on export personnel, research facilities and other resources that the United Nations and specialized agencies can make available to Member Governments on request, and especially to the less developed countries for aiding them in their development;
 2. Elaboration of plans and programmes for the most efficient utilization of such personnel, facilities and resources;
 3. Assistance to Member Governments which seek expert advice in securing, on terms mutually agreed upon, such advice, particularly in the form of teams of experts who would study specific problems and recommend appropriate practical solutions for the consideration of the Member Governments concerned."

24. Until the end of 1965, i.e., the date of functioning of the United Nations Development Programmes, such assistance was given by the ECOSOC chiefly in the form of technical assistance, independent of the specialised agencies. The Expanded Programme of Technical Assistance (EPTA) which operated through a Technical Assistance Committee and a Technical Assistance Board, however, allowed participation by the specialised agencies. In addition to this, it encouraged other kinds of technical assistance established for valid purposes, viz. the Special Fund which was first established in 1958 on the basis of voluntary contributions of Member States, and governed by its own bodies.
25. G.A. Resolution 2029(XX), 1965.
26. See generally U.N. Doc. A/C.I/758; see also C.W.Jenks, "Co-ordination in International Organization: An Introductory Survey", 28 British Year Book of International Law, 1951, pp. 29-89, at p. 78 et seq.,
27. For example, WHO, ILO, FAO, UNESCO.
28. Such reciprocal representation is a common feature between the WHO and the Commission on Narcotic Drugs. Also, the provisional agenda for each session of the Functional Commissions of the Economic and Social Council shall be drawn up by the Secretary-General, in consultation with the Chairman wherever possible, and shall be communicated by the Secretary-General to, amongst others, the President of the International Narcotics Control Board, not less than forty-two days before the opening of the session.
See Rule 5 of the Rules of Procedure of the Functional Commissions of the Economic and Social Council (E/4767).
In terms of Rule 4 of the aforesaid Rules of Procedure, the Secretary-General shall notify, amongst others, the President of the International Narcotics Control Board, of the date and place of the first meeting of each session.
29. See further D.W. Bowett, op. cit., p. 107 et. seq.,
30. In so far as the specialised agencies are concerned (e.g WHO, FAO Etc. in this context) they all have their own budgets, which are determined by the contributions from their own members.
31. See further S. Goodspeed, The Nature and Function of International Organization, Oxford University Press, 1967, p. 420 et. seq.,
32. It should however be emphasised that the system of "linking membership" would by itself result in some measure of co-ordination of policies and activities. See further Goodrich & Hambro, op. cit., p. 420.

33. See U.N. Conference on International Organizations, vol. X, p. 273.
34. See further D.W. Bowett, *op.cit.*, p. 65.
35. The growing dissatisfaction among the developing countries with regard to the inadequacy and ineffectiveness of the Council's (ECOSOC) functions led them to create both UNCTAD and UNIDO as autonomous bodies responsible to the Assembly. See further D.W. Bowett, *ibid.*, see also S. Goodspeed, *op. cit.*, p. 417, and W.M. Kotsching, "The United Nations as an Instrument of Economic and Social Development", 22 International Organization, 1968, pp. 16-43.
36. See further W.R. Sharp, "Decision making in the Economic and Social Council", 22 International Organization, 1968, pp. 881-901, at p. 891. Sharp classifies such consensus into two main categories, (a) routine consensus (e.g. when considering periodic reports of ECOSOC's Commissions, specialised agencies, UNDP Council etc) and (b) quasi-consensus (e.g. when considering the conduct of a study or an administrative change by the Secretary-General). While the former category usually reflects unanimity, the latter, minor dissents, usually in the form of abstentions from voting or explanations of votes.
37. For example, resolutions involving "requests" or "recommendations" relating to programme operation, intensification or invitation addressed to one or more agencies or organs within the U.N. family in connection with the Council's responsibility for programme planning and co-ordination. See further W.R. Sharp, *op. cit.*, p. 891.
38. W.R. Sharp, *ibid.*; see also ECOSOC Resolution 1029 (XXXVII) of 13 August, 1964.
39. See further W.M. Kotsching, *op. cit.*, p. 39 et. seq.,
40. See further the Advisory Opinion of the International Court of Justice on the Judgments of the Administrative Tribunal of the I.L.O upon Complaints made against the UNESCO, I.C.J. Reports, 1956.
41. W.R. Sharp, *op. cit.*, p. 900.
42. D.W. Bowett, *op. cit.*, p. 63. (2nd edition)
43. *ibid.*,
44. See U.N. Doc. A/Conf.34/24.
45. Res. 288(X) of 27 February, 1950, Part VIII, Article 35(b).
46. *infra.*, p. 786.

47. E/CN.7/471, p. 3.
48. *ibid.*,
49. Some of the original members of the Commission had also worked in this field during the period of the League of Nations, e.g. M.G. Bourgois, who was the rapporteur of the last session of the Advisory Committee, was appointed representative of France in the Commission and the representative of the United States in the Commission, Mr. H.J. Anslinger, had been working in this field since he represented his country at the Limitation Conference in 1931. See U.N. Doc. E/CN.7/471, pp. 1-2.
50. U.N. Doc. E/CN.7/471, p. 2.
51. U.N. Doc. E/CN.7/471, p. 8.
52. *ibid.*,
53. *ibid.*,
54. U.N. Doc. E/CN.7/471, p. 10.
55. Under the second category came Switzerland.
56. In this connection the conditions of membership of the IMF, IBRD and other such specialized agencies are instructive.
57. The earlier resolution, i.e., the resolution of the ECOSOC adopted at its first session provided, *inter alia*, "or countries in which illicit traffic in narcotic drugs constitutes a serious social problem."
ECOSOC, Official Records, First Year, First session, vol. I, p. 169.
58. E/CN.7/471, p. 10.
59. See-Rule 12 of the Rules of Procedure of the Functional Commissions of the Economic and Social Council, U.N. Doc. E/4767. As examples of such commissions of the ECOSOC, mention should be made of the Population Commission, the Commission for Social Development and the Commission on Human Rights.
60. U.N. Doc. E/5715.
61. The resolution of the first session of the Economic and Social Council constituted the terms of reference of the Commission on Narcotic Drugs.
62. The Rules of Procedure which had been adopted by resolution 289/X of 6 March, 1950 of the Economic and Social Council, were subsequently amended by the Council resolution 481(XV) of April 1, 1953.

63. The full title of this Protocol was the Protocol Bringing under International Control Drugs Outside the scope of the Convention of 13 July, 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as Amended by the Protocol signed at Lake Success, New York, on 11 December, 1946, signed at Paris on 19 November, 1948, see U.N. Treaty Series, vol. 44, p. 277.
64. The full title of this Protocol was the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, signed at New York on 23 June, 1953, see U.N. Treaty Series, vol. 456, p. 3.
65. The "others concerned" in this matter were the other states Parties to this Protocol and to the World Health Organization.
66. Resolution No. 730 (XXVIII)D. E/3290.
67. *infra.*, pp. 424-429
68. The Commission, however, still performs this function under the Single Convention, *infra.*, p. 429
69. Such questionnaires had been sent to various governments in 1947 to provide information on drug-addiction.
70. Such comments had been invited on the draft Single Convention and also on the draft of the Administrative Guide to the Single Convention. (E/CN.7/471, p. 13).
71. *infra.*, p. 771.
72. See pages 406, 412 and 432
73. The Single Convention on Narcotic Drugs, 1961 owes the Commission much for its contribution to its preparation.
74. —Germany and Japan.
75. In certain cases arrangements for technical assistance to various national governments had to be made as a part of the re-establishment work. See further H.L. May, "Twenty Years of Narcotics Control under the U.N.", Bulletin on Narcotics, vol. XVIII, No. 1, 1966, p. 48 et. seq.,
76. In 1946, a Narcotics Control Working Party had been established in Germany to study the question of narcotic drugs. This Working Party was constituted of representatives from each of the four zones of Germany. (E/CN.7/471, p. 24).
77. Resolution No. 49(IV). (E/399); see also E/CN.7/471, p. 24.

78. supra., pp. 236-239
79. See Resolutions 159II B(E/1065) and 505 (XVI)B(E/2508). In fact, it was the Commission's indomitable efforts that helped keep this matter under constant review, although public opinion played a great role in this matter. It should also be mentioned that it was due to the joint efforts of the Commission and some humanitarian organisations that this evil was brought under considerable control in the Far East, by the enactment of prohibitive laws in this regard. It was not until 1959 that Thailand enacted laws prohibiting opium-smoking.
80. supra., p. 388
81. At present such reports are received by the Division of Narcotic Drugs first.
82. Article 21 of the Limitation Convention, 1931.
83. This Committee has been known as the Expert Committee on Dependence-Producing Drugs since 1965.
84. The Commission prepared annually a summary of the laws and regulations of various countries related to the drug-problem, but at its eleventh session decided to discontinue such Annual summaries and advised the Secretary-General to prepare a cumulative index of laws annually and a document recording the changes in the national laws and thereby changes in the scope of control. See also Official Records of the ECOSOC, 22nd session.
85. H.L. May, "Twenty Years of Narcotics Control under the U.N.", Bulletin on Narcotic Drugs, vol. XVIII, 1966, p. 21
86. See also Council's Resolution No. 770(XXX)E. (E/3422).
87. H.L. May, op. cit., p. 15.
88. Council's Resolution 49(IV) (E/437), p. 38.
The Economic and Social Council,
" Having noted the importance of bringing a speedy solution to the urgent problem of the limitation of production of raw materials from which narcotic drugs are manufactured, and Having noted the preparatory work initiated by the Commission with a view to holding an international conference to deal with this problem,
1. Approves the issue of the questionnaire on raw opium by the Commission on Narcotic Drugs (Doc. E/251/Add.2), and requests the Secretary-General to transmit this questionnaire to the Governments concerned asking them to communicate, on or before 15 August 1947, the information called for therein and any observations bearing on the subject which they may wish to submit, and
2. Approves the decision of the Commission to draw up a questionnaire on the coca leaf to be considered by the Commission at its next session and subsequently to be transmitted to Governments."

89. Such a proposal was originally made by the French Government.
90. Resolution No. 395 (XIII) (E/2152).
91. *infra.*, pp. 555-569
92. Such an effort was made by the Commission in respect of the 1953 Protocol.
93. The first list was prepared by a sub-committee of experts of the Opium Advisory Committee of the League. (E/CN.7/471, p. 38).
94. Such lists are now prepared by the Commission itself.
See also Resolution of the Council No. 505(XVI) (E/2508)
95. See WHO/HFD/9 and Corr. 1. It was however realised that neither a trade nor a proprietary name would be appropriate for this purpose.
96. See the Commission's recommendations at its seventh session; see also the Council's Resolution No. 436(XIV)G (E/2332).
97. Opium, for example, because of its smell, weight etc. is not easy to transport. In order to avert this difficulty, the traffickers usually extract the morphine near the source of production. This may be done in two ways, either by diverting the product from licit cultivation or by producing it illicitly. In some cases, however, owing to difficulties in the procedure of enforcement of law, or perhaps due to lack of consciousness of the intensity of the problem, such illicit production is allowed. On the other hand, it is easier to transport hashish, which is a refined resin of cannabis. Although cannabis itself is difficult to transport, if it is transported, difficulties are encountered in determining the amount of cannabis seized because of the various methods of assessment used in different countries. Some countries determine the amount by the weight of the whole plant while some others by the number of plants destroyed.
Synthetic drugs are difficult to manufacture and, therefore, the traffickers attempt to divert the licit supply into illicit traffic.
98. The particulars of each case of illicit traffic were to include as far as possible:
- " (a) The kind and quantity of drugs involved;
 - (b) The origin of the drugs, their marks and labels;
 - (c) The points at which the drugs were diverted into the illicit traffic;
 - (d) The place from which the drugs were despatched, and the names of shipping or forwarding agents or consignors; the methods of consignment and the name and address of consignees, if known;
 - (e) The methods and routes used by smugglers and names of ships, if any, in which the drugs have been shipped;

98. (f) The action taken by the Government in regard to the persons involved, particularly those possessing authorisations or licences and the penalties imposed;
(g) Any other information which would assist in the suppression of illicit traffic."
99. infra., p. 771
100. For some time (from the ninth to the eighteenth sessions) the Commission had a Special Committee on illicit traffic.
101. Resolution 159 IIC(VII).
102. Resolution 436F(XIV).
103. General Assembly Resolution 834(IX) (1954).
104. The Commission persistently requested the governments concerned to supply more authenticated samples of opium for research; see the Commission's resolutions V(XIII) (1956), 6(XIV) (1959) and 3(XVII) (1962).
105. Such a method had been experimented with not only at the United Nations Laboratory but also at the Institute for the Control of Drugs at Zagreb in Yugoslavia. This method had the advantage of simplicity and unsophistication and was therefore very easily applicable in any reasonably equipped laboratory in the world.
See further U.N. Doc. E/CN.7/471, pp. 52-53.
106. Its recommendation at the nineteenth session, paragraph 185.
107. infra., pp. 555-569
108. infra., pp. 619-623
109. Turkey was not a Party to the 1953 Protocol, yet, its Act 7368 of July, 1959 is based on the principles enunciated in that Protocol. See U.N. Doc. E/NL/1959/85.
110. In 1964, at the recommendation of the Commission and the Council (see Resolution 962B II(XXXVI)) a survey was carried out in Burma with a view to ascertaining the economic and social aspects of opium production and consumption in some parts of that country. It was re-affirmed after that survey that education and effective demonstration as to the abuses of drugs would be essential to eradicate such a problem.
See further Commission's Report, nineteenth session, paragraph 169.
111. Commission's Report, eleventh session, paragraph 258.
112. Fifth session.
113. Twelfth session, paragraph 104.

114. U.N. Doc. E/CN.7/471, p. 3.
115. H.L.May, op. cit., p. 28.
116. The case of Afghanistan deserved special attention. Afghanistan did not participate in the 1953 Conference, and in fact, production of opium in this country went unabated. If a country could produce opium in an unrestricted way, this would defeat the basic policy of restricted supply and trade. On the other hand, prohibition of export of opium would mean that the produced opium would cause illicit traffic to thrive. With this had to be taken into account the economic dependence of Afghanistan on opium until a suitable substitute of earnings for the country had been found. It was due to the persistent pressure which was exercised by the Commission on the government of Afghanistan that finally, at the thirteen session of the Commission, the representative of the government of Afghanistan declared that his country would implement a policy of total prohibition of cultivation, import, export, purchase, sale and trade in opium. The Commission recommended to the Council a resolution for confirmation of this policy, and the Council adopted that resolution at its twenty-sixth session. See resolution No. 689(XXVI)H.
117. Iran : had a deep-rooted problem. At the root of the problem was the habit of opium-smoking by the Iranians. Opium was also one of the revenue-earning products of Iran. Smoking of opium was a part of Iranian socio-cultural life. It was at the initiative of the Commission that the Council adopted a resolution to operate in Iran a technical assistance programme known as Special Advisory Aid to Iran (See Resolution 626 E(XXII)). Although Iran for reasons stated above was crippled by this problem, it was through the constant co-operation and guidance of the Commission that she finally passed a law in 1955 banning the cultivation of the opium poppy and the use of opium also.
118. Although in November 1947, the Commission requested the governments to complete the revised questionnaire which had been sent to them with a view to assessing the existing situation on coca leaf and taking further necessary action for control (see U.N. Doc. E/CN.7/73) the government of Peru in the same year requested that a Commission of Enquiry should be set up to study the "effects of the use of coca leaf on the population of certain regions in South America (see U.N. Doc. E/CN.7/96; see also Bulletin on Narcotics, No. 1., 1949, p. 41). In March, 1948 the Council, at the suggestion of the Commission, passed a resolution approving the despatch of a Commission of Enquiry to Peru. The members of the medical team of this Commission of Enquiry were elected by the Commission on Narcotic Drugs. The Commission also suggested to the Council that in addition to the

118. usual enquiry, it would be advisable to hold an enquiry on the spot to study the possibilities of limiting the production of coca leaves, and at its sixth session, the Council, in appreciation of the Commission's recommendation adopted a resolution to this effect (see resolution 123 C(VI)).

In April 1949, the Government of Bolivia also requested if the Commission of Enquiry could be extended to that country and the Commission on Narcotic Drugs considered this request in June 1949. The Commission recommended that in view of the intensity of the problem in Bolivia, and in order to enable the Commission to make a through study of the problem, a larger fund than that granted by the General Assembly on this account would be necessary. The Economic and Social Council, in appreciation of this recommendation of the Commission, adopted a resolution at its ninth session.

The work of the Commission on Narcotic Drugs in respect of Peru and Bolivia may be exemplified as the type of work which it did, and still does in every such case. It studied the report of the Commission of Enquiry and took further necessary action by recommending the Council to ask the governments of Peru and Bolivia to limit the production of coca leaves and to take all preventive measures for the suppression of the illicit traffic in narcotic drugs. At its fourteenth session, the Council adopted a resolution to this effect (Res. 436E(XIV). Although the Peruvian government enacted laws to combat the illicit traffic in narcotic drugs (see U.N. Doc. E/CN.7/170 dated 13 May, 1949), the Commission however gave its serious consideration to the proposal made by the Commission of Enquiry that the chewing of coca leaf, which was prevalent in Peru and Bolivia, was a dangerous habit with harmful effects on the individuals and the nations at large. But in view of the inherent difficulties in the abolition of chewing coca leaf, which was a part of socio-cultural life in the areas concerned, the Commission recommended a gradual suppression of this habit and in order to achieve success by taking a multiple approach viz. by crop substitution and education, it advocated the need for technical assistance from the United Nations. Such a recommendation had not only been approved by the regional meetings sponsored by the United Nations in Rio de Janeiro in 1961 and in Lima in 1962, but had also been adopted in the form of a resolution by the Council (see Res. 548E(XVIII), and necessary action in this regard had been taken in accordance with the resolution. (For Report of the Commission of Enquiry on the coca leaf: Comments of the members of the Commission on the statements made by the representatives of Peru and Bolivia at the fifth session of the Commission on Narcotic Drugs, (see U.N. Doc. E/1666/Add. 1. and E/1666/Add.1/Rev.1). For Report of the Commission of Enquiry on the Coca Leaf: Statements circulated by the representatives of Peru, see U.N. Doc. E/1666/Add.3, and for Report of the United Nations Commission of Enquiry on the Coca Leaf- Commentaries from the governments of Peru and Bolivia, see U.N. Doc. E/CN.7/235.

119. Examples of such Regional Conferences are: the First Inter-American Meeting on the Illicit Traffic in Cocaine and Coca Leaves held in Brazil from 21 to 25 March, 1960, the South East Asian Regional Conference on Illicit Drug Traffic held in Pakistan from 18 to 23 January, 1960, the Third Arab Conference on Narcotic Drugs held in the United Arab Republic from 7 to 11 March, 1960 and the Middle East Narcotics Survey Mission (from September to October, 1959) of the United Nations.
See further Bulletin on Narcotics, October-December, 1960, pp. 29-42; see also H. Nargeolet and C. Vaille, "Effort to Promote European Regional Co-ordination of Action Against Drug Addiction", Bulletin on Narcotics, vol. XXV, 1973, pp. 1-7.
120. See further Bulletin on Narcotics, op. cit., p. 29 et. seq.,
121. A United Nations Consultative Group on Narcotics Mission in Asia and in the Far East met in Tokyo from 3 to 12 February, 1964. It was organised as a regional project under resolution 1395(XIV) of the General Assembly of the United Nations. See further "United Nations Consultative Group on Narcotics Problems in Asia and the Far East", Bulletin on Narcotics, vol. XVII, 1965, pp. 39-46.
122. In 1964 the government of Thailand requested the United Nations to assist them in carrying out a survey of the economic and social needs of the opium producing areas with a view to abolishing opium cultivation in Thailand and opium-smoking amongst its hill tribes. The Economic and Social Council complied with this request and adopted a resolution (1025C(XXXVII)C) on the basis of which a U.N. Survey Team was sent to Thailand. This survey was carried out in 1965-66.
See further "The Hill Tribes of Thailand and the Place of Opium in their Socio-economic Setting: Report of the United Nations Survey Team on the Economic and Social Needs of the Opium Producing Areas in Thailand", Bulletin on Narcotics, vol. XX, 1968, pp. 7-17.
123. What however constitutes "drug addiction" is a matter of controversy. None of the drug-conventions including the Single Convention defined the term, yet some of them referred to it in some form or other. The Hague Opium Convention of 1912 described it as "the abuse of opium, morphine and cocaine as also of the drugs prepared or derived from these substances" (Preamble to the Convention), while the Limitation Convention of 1931 did not make any attempt to define this term, although Article 15 contained the term.
124. *infra.*, p. 495 and pp. 501-504

125. Although the term "technical assistance" had been used by the Commission since the operation of this programme (at its eleventh session), it was subsequently changed to " Technical Co-operation", perhaps to emphasise the importance of international co-operation in eradicating the narcotics evil. According to one authority, however, when assistance is granted for improvement of the narcotics situation, " it goes not only to a given country: it is a means for the international community of improving its own situation which justifies the name of co-operation for such a joint endeavour." The present writer however believes that this meaning of the term "co-operation" is applicable to all cases of assistance, since assistance to an individual country may mean assistance to the international community at large.
See further H.L. May, op. cit., p. 48.
126. See Resolution 626D (XXII).
127. In its original recommendation the Commission included the proposal for technical assistance to the inter-country projects, but this was not accepted by the Secretary-General. See also Res. 222(IX) of the Economic and Social Council in which the principles by which technical assistance should be regulated have been outlined.
128. Twenty-eighth session, Resolution 688 (XXVI).
129. General Assembly Resolution 1395(XIV).
130. While the League of Arab States constituted a narcotics bureau under it, in the Middle East a Narcotics Survey Mission had been established, see U.N. Doc. E/CN.7/471, pp. 101-102.
131. Some of these Consultative Groups were: the South-East Asia Consultative Group on Narcotics Control which met in Bangkok in 1960 and the Inter-American Consultative Group on Narcotics Control which met in Rio de Janeiro in 1961.
See further U.N. Doc. E/CN.7/471, p. 103.
132. For example, the Seminar on Narcotics Control Problems of Developing Countries in Africa which met in Addis Ababa in 1963, and the Consultative Group on Narcotics Problems in Asia and the Far East, which met in Tokyo in 1964.
See further U.N. Doc. E/CN.7/471, p. 103.
133. Such officers were sent to South East Asia in 1961 and to Latin America in 1963-65.
See further U.N. Doc. E/CN.7/471, p. 103.
134. The words " all matters" are meant to include " all aspects of drugs", i.e., the political, legal, administrative, economic, social, medical and scientific aspects which constitute an international problem.
See also the Commentary on the Single Convention, op. cit., p. 128.

135. See terms of reference of the Commission, Resolution 9(1), paragraph 2(e), see U.N. Doc. E/CN.7/471, p. 3.

It should be mentioned in this connection that it has been decided to continue the work which the Commission had already undertaken prior to the coming into force of the Single Convention, e.g. the research programmes to develop methods for determining the geographic origin of opium (See ECOSOC's resolutions 159LL C(VII)(1948); 246F(IX) (1949), 436F(XIV) (1952) and 626H (XXII) (1956) and also U.N. Doc. E/CN.7/471, paragraphs 118-130) and also the maintenance of the United Nations Laboratory in Geneva for conducting research into narcotic drugs (G.A. resolution 834 (IX)(1954); see also ECOSOC's resolution 667C (XXIV) (1957)).

136. See Commentary of the Single Convention, op. cit., p. 128. Decisions of the Commission concerning changes in the Schedules of the Single Convention (Article 3), i.e., changes in the scope of control, must be communicated to those non-parties to the Convention who are Members of the U.N. (Article 3, paragraph 7 and paragraph 8, sub-paragraph (c)).

137. This Article specifies the following, in particular:
- (a) An annual report on the working of the Convention within each of their territories;
 - (b) the text of all laws and regulations from time to time promulgated in order to give effect to this Convention;
 - (c) such particulars as the Commission shall determine concerning cases of illicit traffic, including particulars of each case of illicit traffic discovered which may be of importance; and
 - (d) the names and addresses of the governmental authorities empowered to issue export and import authorisations or certificates.

138. See Article 26 of the International Opium Convention, 1925 and Article 13 of the 1953 Protocol. Although the previous narcotics conventions had not been universally accepted, it was evidenced that a non-party, having failed to carry out the provisions of a drug convention, subsequently agreed to comply with them upon a request of the Commission.

139. For copy of the import certificate which is at present in operation, see U.N. Doc. E/NR.FORM/Rev.2 or Annex of the U.N. Doc. E/CN.7/484/Rev. 1.

140. The safeguards which were recommended by the ECOSOC on the basis of the recommendations of the International Civil Aviation Organization, the World Health Organization, the Commission on Narcotic Drugs and the International Criminal Police Organization may be found in its resolution 770 XXX E, which was adopted at its thirteenth session, see U.N. Doc. E/3385/E.CN.7/395, pp. 39-40.

141. For obvious reasons, it is not possible to prepare an exhaustive list showing the names of the organisations which may be consulted by the Commission in respect of this matter. The following are the names of some such organisations which are thought to be particularly relevant for this purpose: (1) The International Narcotics Control Board (2) The International Civil Aviation Organization (3) The World Health Organization (4) The International Criminal Police Organization (5) The Inter-Governmental Maritime Consultative Organization (6) The International Labour Organization.
142. Article 7 of the Single Convention.
143. Article 62 of the U.N. Charter:
 "1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.
 2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.
 3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.
 4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence."
144. Paragraph 2 of the resolution 9(1) of the Economic and Social Council has enumerated the terms of reference by the Commission. The provisions concerning the composition of the Commission had been amended by resolutions 199(VIII), 845(XXXII) and III, paragraph 1 and 1147 (XLI), paragraph 4.
145. See Official Records of the ECOSOC, forty-sixth session, U.N. Doc. E/4606/Rev.1, annex IV, and forty-eighth session, supplement No. 8 (E/4785), chapter III.
146. See also Commentary on the Single Convention on Narcotic Drugs, op. cit., p. 122.
147. e.g. Hallucinogenics, barbiturates, amphetamines and tranquilizers. See also U.N. Doc. E/CN.7/471, pp. 72-76.
148. e.g. ECOSOC resolution 667D(XXIV) in respect of Khat
149. U.N. Doc. E/4767.

150. Some other such functional commissions are: Statistical Commission, Population Commission, Commission for Social Development, Commission on Human Rights and the Commission on the Status of Women.
151. Rule 5.
152. Rule 6.
153. Rule 20.
154. Rule 28.
155. According to Rule 67 each sub-commission " shall meet once a year unless otherwise decided by the Council", although the "terms of office of members of sub-commission shall begin on 1 January following their election, and shall end 31 December following the election of their successors." See Rule 69.
156. Rule 72 has again provided that: " The representation of any Member thus invited shall not have the right to vote but may submit proposals which may be put to vote by request of any member of the commission."
157. In fact, Article 8 of the Single Convention authorises the Commission to perform these functions (as treaty functions). It formerly performed such functions only on the basis of the decisions of the Economic and Social Council.
158. See the Preamble to the Convention.
159. See also the opinion of the Turkish delegate at the Conference, who stated that the important powers conferred on it would have far-reaching implications and would directly affect the parties. Twentieth Plenary Meeting, U.N. Doc. A/Conf.34/24, p. 89.
160. The Commission's decisions under Article 3 of the Single Convention are subject to a different review procedure. See Article 8.
161. *supra.*, pp. 140-162
162. The Single Convention came into force on 13 December, 1964. By Article 45 of this Convention the ECOSOC had been given authority to fix the date on which the new Board would enter upon its duties. Meanwhile, it was decided that the functions of the Board would be provisionally carried out by the Permanent Central Board and the Drug Supervisory Body.
163. See Official Records of the Economic and Social Council, fortieth session, supplement No. 2 (E/4140); see also U.N. Doc. E/4158/Rev.1. (1966), E/4761 (1969) and Articles 2 and 3 of the Final Act and Protocol Amending the Single Convention on Narcotic Drugs, 1961 (Article 9), U.N. Doc. E/Conf.63/9 dated 25 March, 1972.

164. ECOSOC Resolution 1106(XL), paragraph 5.
165. Article 2 of the 1972 Protocol amending Article 9(1) of the Single Convention.
166. Article 10, paragraph 1. It may however be observed that although a long term of office is often found helpful in strengthening the independence of members of any office, originally a shorter period of office for members was considered necessary with a view to offering newly independent states opportunities for membership; see also Commentary on the Single Convention, op. cit., p. 143; and Records of Conference, vol.II, p. 233.
167. Article 2 of the 1972 Protocol amending Article 9(1) of the Single Convention.
168. The nominations on behalf of the World Health Organization are made by its Director-General, see Resolution of the World Health Assembly 1846 (May 1965).
169. According to the "procedure" adopted by the ECOSOC, the Secretary-General of the U.N. invites, a year before the date of actual election, all concerned to nominate candidates for the Board in accordance with the requirements of its membership which are also indicated in the invitation.
170. U.N. Doc. E/4158/Rev. 1., paragraph 13; see also U.N. Doc. E/4761, Annex II, paragraph 13.
171. Even a stateless person may be elected provided that such a person has been nominated.
172. This Committee was set up by the Economic and Social Council and given responsibility for selecting suitable candidates from the nominees of the various governments. This Committee prepares two panels, one containing the nominees of governments and the other the nominees of the World Health Organization. The Single Convention has not stipulated any specific number of candidates to be recommended under each list, and finally selected for the Board. If however a vacancy occurs, the position will be filled by the nominating authority concerned, i.e., either the nominating government or the World Health Organization.
See further Commentary on the Single Convention, op. cit., p. 134.
173. Article 9, paragraph 3. The Convention has not envisaged any situation in which the principle of equitable geographical distribution may be disturbed owing to the change of nationality of a member, or in the event of his becoming a stateless person.

174. In terms of Article 10, paragraph 6, " the members of the Board shall receive an adequate remuneration as determined by the General Assembly." No such express provision had been made for remuneration or honorarium of the members of the Permanent Central Board. However, during both the League period and the life time of the Permanent Central Board, the members were paid honoraria or allowances. See further Bulletin on Narcotics, vol. II, p. 69, G.A. Resolution 875(IX), para (c) of 4th December, 1954, L.N. Doc. C.760. M. 260, 1924 XI, vol. I, p. 471 and vol. II, p. 139.
175. Article 6 of the Single Convention.
176. In terms of Article 15 of the Convention the Board shall submit to the Council through the Commission an annual report on its work, including an analysis of the estimates and statistical information etc.
177. According to Article 19 of the International Opium Convention, 1925, members of the Permanent Central Board were required to maintain high standards of a technical, intellectual and moral nature.
178. Although Article 19 of the International Opium Convention provided, inter alia, that the " members of the Central Board shall not hold any office which puts them in a position of direct dependence on their governments." The strict provisions which, inter alia, implied that government employees would not be eligible for membership of the Board, could not be maintained after World War II because of the emergence of many socialist countries and also because of the shortage of qualified people in sectors other than government ones. The Economic and Social Council had therefore adopted a resolution (123D(VI) of 2nd March 1948) allowing certain categories of government employees with no direct dependence upon their governments, viz. judges, university professors and medical practitioners to become members of the Board without relinquishing their assignments with governments. The Council also authorised the appointment of civil servants to the Board provided that they, during their term of office, had terminated their functions as government officials and had not taken any instruction from their governments.
italics added.
179. Similar provisions may be found in Article 19 of the International Opium Convention of 1925. See also Article 19, paragraph 7 of the 1946 Protocol.

180. The Rules of Procedure of the Functional Commissions of the Economic and Social Council have been adopted by the Council.
See resolutions 100(V), 289 (X), 481(XV), 1231 (XLII), and 1393 (XLVI) of the Economic and Social Council, its decisions of 2 August, 1968 (1561st meeting) of 3 June 1969 (1596th meeting) and of 17 November 1969 (1647th meeting) and Article 68 of the U.N. Charter.
181. Article 3 of the 1972 Protocol amending Article 10(4) of the Single Convention. This provision is in conformity with those of Article 14 of the Single Convention, i.e., the Measures which the Board has been authorised to take to ensure the execution of provisions of the Convention.
182. *supra.*, pp. 245- 250.
183. The governments are required to inform the Board as to their requirements of forms in order to enable the Board to send them a good supply. If an estimate is not supplied on the prescribed form, it may not be regarded as a qualified estimate.
184. The Parties are required to supply information on the following matters:
- (a) Quantities of drugs to be consumed for medical and scientific purposes;
 - (b) Quantities of drugs to be utilized for the manufacture of other drugs, of preparations in Schedule II, and of substances not covered by this Convention;
 - (c) Stocks of drugs to be held as at 31 December of the year to which the estimates relate;
 - (d) Quantities of drugs necessary for addition to special stocks;
 - (e) The area (in hectares) and the geographical location of land to be used for the cultivation of the opium poppy;
 - (f) Approximate quantity of opium to be produced;
 - (g) The number of industrial establishments which will manufacture synthetic drugs; and
 - (h) The quantities of synthetic drugs to be manufactured by each of the establishments referred to in the preceding subparagraph.
- See also Article 9 of the 1972 Protocol amending Article 19(1) of the Single Convention.
185. It refers to the population, age of the users of drugs, the nature of health facilities available to the population concerned, relevant data on epidemiological and other health matters.
186. According to the present practice governments are required to send their estimates by 1 August of the year preceding that to which they refer. See Form B/S 7th edition, March, 1971.

187. A "country" in this context means a "State" as a whole.
188. A "territory" in this context means any part of a state which will be "treated as a separate entity for the application of special provisions relating to international trade" as enunciated in Article 31. See also Articles 40, 41 and 42.
189. In examining or determining estimates, the Board usually takes into account the figures of "consumption" over the preceding three years. These figures may however be allowed to fluctuate on grounds of economic development. In order to determine the most nearly accurate estimates, the Board calls on governments to ensure that their estimates for consumption should not include any amount meant for stocks or for manufacturers, wholesalers and importers, other than the amount required by retail pharmacists.

In accordance with Article 49 even during the transitional period of reservation, the Parties are required to submit, inter alia, separate statistics on the production of opium, coca leaves, cannabis, cannabis resin (the Board at present requests the Parties to give statistical information on production on form R/S) extracts and tinctures of cannabis and the production and manufacture of and trade in the aforesaid drugs for non-medical purposes. The Board has also been authorised to obtain an exclusive account of drugs by means of different figures for drugs coming under different categories, viz. (a) quantities required to be utilised for the substances of other drugs (b) of preparation in Schedule III and (c) the substances not covered by this Convention and the relevant form B/S also contains three different columns for this purpose.

Prior to the coming into force of the Single Convention, only a single figure was given for the estimated amount of each drug required for conversion. The quantities required for the manufacture of preparations for the export of which export authorizations were not required (such preparations have been included in Schedule III of the Single Convention) were shown in the consumption estimates. See Article 6(1)(a)(iii) of the Limitation Convention of 1931, Article 8(1)(a) of the 1953 Protocol and Article 8 of the International Opium Convention of 1925. See also *infra.*, the Section entitled "A Critical Examination of the Estimates and Statistical Returns Systems".

The Board will also expect from the Parties separate estimates of coca leaves to be used for the manufacture of flavouring ingredient in accordance with Article 27(2) and the amount required for its utilization for other drugs in pursuance of Article 19(4). Article 19(1)(c) however does not authorise the Board to request separate figures for drugs to be held in different kinds of stocks.

190. *infra.*, pp. 673-679 and pp. 689-694

191. It is necessary for the Board to examine the estimates speedily especially the supplementary ones, simply because in the event of any delay the country may increase its limits and thus obtain drugs which have not been accounted for. In practice, in the case of supplementary estimates, if the Board is not in session, the Board's Secretariat take very speedy action (even by telegraphic communication) and obtain the formal approval of the Board in due course.
192. Article 5 of the 1972 Protocol amending Article 12, paragraph 5 of the Single Convention.
193. Article 9 of the 1972 Protocol amending Article 19, paragraphs 1, 2 and 5 of the Single Convention.
194. See Article 21, paragraph 1.
195. Article 31, paragraph 1, sub-paragraph (b) and Article 21, paragraph 4.
196. *infra.*, p. 694
197. (a) production or manufacture of drugs;
 (b) utilization of drugs for the manufacture of other drugs, of preparations in Schedule II and of substances not covered by this Convention, and utilization of poppy straw for the manufacture of drugs;
 (c) consumption of drugs;
 (d) imports and exports of drugs and poppy straw;
 (e) seizure of drugs and disposal thereof;
 (f) stocks of drugs as at 31 December of the year to which the returns relate; and
 (g) ascertainable area of cultivation of the opium poppy. (Article 10 of the 1972 Protocol).
198. The corresponding provisions may be found in Articles 22(1) and 23 of the International Opium Convention of 1925 and in Article 9(2) of the 1953 Protocol. The "method" includes the "method of transmission", e.g. by air mail, where such forms will not be transmitted to the Board's Secretariat by a member of a delegation or by a messenger. It may also ask the countries to indicate the country of origin of drugs and their destination. See Form C/S for the Annual Statistics of Production, Manufacture, Consumption, Stocks and Seizures of Narcotic Drugs, Form A/S for the Quarterly Statistics of Imports and Exports of Narcotic Drugs, and Form R/S for the Annual Statistics of Narcotic Drugs Used for Non-medical Purposes. All forms should be completed in typescript.
199. Italics added, *infra.*, pp. 687-688

200. U.N. Conference for the Adoption of a Single Convention on Narcotic Drugs, Records, vol. II, p. 287, footnote 33.
201. Article 21, paragraph 4. The non-parties may also be subjected by the Board to measures enunciated in Article 14 of the Single Convention and Article 6 of the 1972 Protocol, i.e., the measures to ensure the execution of provisions of the Convention.
202. See Form C/S Table I.
203. Article 2, paragraph 3.
204. See also Article 22, paragraph 2 of the International Opium Convention of 1925, Article 9(1)(c) of the 1953 Protocol and Form A/S of the International Narcotics Control Board (first column of parts I and II of the tables).
205. Under the Single Convention a system of quarterly statistical reports has also been devised according to which the Parties are required to submit to the Board such statistics on Form A/S. The Annual statistics are to be submitted on Form C/S. Such periodic checking helps the Board enter a caution to a recalcitrant government when it exceeds its quota of import and /or export.
206. See Form A/S, item II in the first column of Part I of the tables.
207. See Article 20, paragraph 4.
208. Form C/S (November 1970 edition), table II, column E.
209. Article 13, paragraph 1 and Article 20, paragraph 1.
210. Article 1 of the 1972 Protocol amending Article 2(4) of the Single Convention.
211. Form C/S, footnote (b) to table II (5th edition, 1970); see also Form A/S, instruction 11 (6th edition, 1970).
212. See also Article 20, paragraph 1, sub-paragraph(e) of this Convention, Article 22, paragraph 1, sub-paragraph (e) of the 1925 Convention and Article 9, paragraph 1, sub-paragraph(a), clause (iv) of the 1953 Protocol.
See also Form C/S of the Board, (1970 edition), table II, column F.
213. *italics added.*
214. Article 12, paragraph 2 of the 1953 Protocol.
215. Articles 24 and 26 of the 1925 Convention, Articles 13(1) and 14(3) of the Limitation Convention, 1931 and Article 12 (2) of the 1953 Protocol.

216. Article 14, paragraph 2, and Article 6, paragraph 2 of the 1972 Protocol.
217. Article 11, paragraph 1, sub-paragraph (d) of the 1953 Protocol.
218. Article 14, paragraph 1, sub-paragraph (b) and Article 6, paragraph 1, sub-paragraph (b) of the 1972 Protocol.
219. Article 11, paragraph 1, sub-paragraph (c) of the 1953 Protocol.
220. Article 14, paragraph 1, sub-paragraph (a), and Article 6, paragraph 1, sub-paragraph (a) of the 1972 Protocol.
221. In the latter situation, the Board will ask the defaulting government either to furnish additional information or to comply with its instruction. See Articles 12(4) and 13(3). The Board may also give its comments on a particular case in its reports to the Economic and Social Council for publication under Article 15.
223. The Secretary-General or the Commission may have reason to believe in such failure from the annual reports of governments, see Article 18, paragraph, sub-paragraph (b).
224. Paragraph 1, sub-paragraph (e).
225. Paragraph 4, sub-paragraphs (a) and (b).
226. See Article 19(2) of the Single Convention and Article 9 of the 1972 Protocol, and Article 21(3) of the Single Convention.
227. There are however two exceptions to this provision which have been mentioned in clauses (i) and (ii) of sub-paragraph (b) of paragraph 4 of Article 21, namely,
 (i) " In the event of a supplementary estimate being furnished for that country or territory in respect both of any ~~quantity over-imported~~ and of the additional quantity required, or
 (ii) " In exceptional cases where the export, in the opinion of the government of the exporting country, is essential for the treatment of the sick."
228. Article 29:1. " The Parties shall require that the manufacture of of-drugs be under licence except where such manufacture is carried out by a State enterprise or State enterprises.
 2. The Parties shall:
 ...
 (c) Require that licensed manufacturers of drugs obtain periodical permits specifying the kinds and amounts of drugs which they shall be entitled to manufacture. A periodical permit, however, need not be required for preparations."

229. The Board may ask for a state enterprise system under Articles 23, 26 and 28 of the Convention.

230. Article 15:

- "1. The Board shall prepare an annual report on its work and such additional papers as it considers necessary containing also an analysis of the estimates and statistical information at its disposal, and, in appropriate cases, an account of the explanations, if any, given by or required of Governments, together with any observations and recommendations which the Board desires to make. These reports shall be submitted to the Council through the Commission, which may make such comments as it sees fit.
2. The reports shall be communicated to the Parties and subsequently published by the Secretary-General. The Parties shall permit their unrestricted distribution."

In practice, the present Board like the Permanent Central Board has suggested reforms of narcotic laws and regulations in many countries on a number of occasions, and the Convention also authorises the Board to do so. see Articles 44, 45(2) of the Single Convention and Article 11(1)(c) of the 1953 Protocol.

231. See Article 12, paragraph 3.

-232. It is doubtful whether the embargo provisions contained in Article 21, paragraph 4 (which comes into operation in the case of an import quota of a country being exceeded) of the Single Convention are mandatory.

233. The Board may in certain cases where financial aid would be necessary to improve the situation recommend to the competent United Nations Organs and to the specialized agencies that technical or financial assistance or both, be provided to the Government in support of its efforts to carry out its obligations under this Convention.
See Article 14 bis. of the 1972 Protocol.

234. *Article 42; See also Article 20 of the 1953 Protocol.*

235. Whether or not a country or territory is directly interested is to be determined in terms of its involvement in the export or import of drugs with the recalcitrant country concerned.

236. Article 14, paragraph 3

" The Board shall have the right to publish a report on any matter dealt with under the provisions of this article, and communicate it to the Council, which shall forward it to all Parties. If the Board publishes in this report a decision taken under this article or any information relating thereto, it shall also publish therein the views of the Government if the latter so requests."

237. Article 2 of the 1972 Protocol amending Article 9(1) of the Single Convention.
238. See also Article 3 of the 1972 Protocol amending Article 10(4) of the Single Convention.
239. See also last paragraph of Article 19 of the International Opium Convention, 1925 and paragraph 3 of Article 11 and sub-paragraph (a) of paragraph 4 of Article 12 of the 1953 Protocol, where a majority had been recommended for decisions by the Permanent Central Board.
240. In terms of Article 11, paragraph 3, " the quorum necessary at meetings of the Board shall consist of eight members." . (Article 4 of the 1972 Protocol).
241. Article 19.
242. Article 12, paragraph 3 of the Single Convention and Article 5 of the 1972 Protocol amending Article 12, paragraph 5 of the Single Convention.
243. Before the coming into force of the Single Convention, the limitation regime was applied only to substances which came under the Limitation Convention of 1931, and the Protocols of 1948 and 1953, i.e., it was applicable only to manufactured drugs (except extracts and tinctures of cannabis) and to opium. It was not applicable to extracts and tinctures of cannabis, cannabis resin and coca leaves.
244. "(a) The quantity consumed, within the limit of the relevant estimate, for medical and scientific purposes;
-(b) The quantity used, within the limit of the relevant estimate, for the manufacture of other drugs, of preparations in Schedule III, and of substances not covered by this Convention;
(c) The quantity exported;
-(d) The quantity added to the stock for the purpose of bringing that stock up to the level specified in the relevant estimate; and
(e) The quantity acquired within the limit of the relevant estimate for special purposes."

In terms of paragraph 2 of Article 21, " From the sum of the quantities specified in paragraph 1 there shall be deducted any quantity that has been seized and released for licit use, as well as any quantity taken from special stocks for the requirements of the civilian population."
245. Article 9(2)(a) of the 1972 Protocol, amending Article 19(2) of the Single Convention:

" Subject to the deductions referred to paragraph 3 of Article 21, the total of the estimates for each territory and each drug except opium and synthetic drugs shall consist of the sum of the amounts specified under sub-paragraphs (a), (b) and (d) of paragraph 1 of this article, with the addition of any amount required to bring the actual stocks on hand at 31 December of the preceding year to the level estimated as provided in sub-paragraph (c) of paragraph. "

246. *infra.*, pp. 669-671.
247. Such statistics are to be sent to the Board by 30 June of the year following that in which the excess has occurred, see Article 20(2)(a).
248. See also Article 5 of the 1972 Protocol amending Article 12(5) of the Single Convention.
249. See Article 42.
250. Article 14(2) of the Limitation Convention of 1931 and Article 8(11) of the 1953 Protocol.
251. The Permanent Central Board could impose an embargo upon a country only in the case of excessive imports.
252. Article 13(2)(c)(i) of the Limitation Convention of 1931.
253. See especially paragraphs 4 and 5 of Article 2 of the 1972 Protocol amending Article 9 of the Single Convention.
254. Article 9(2).
255. Article 9(1) of the Single Convention read with Article 2 of the 1972 Protocol and Article 6 of the Single Convention.
256. See Reports of the Board to the Economic and Social Council.
257. Annex to resolution 1196(XLII).
258. *infra.*, pp. 504-507
259. The position of such members of the Board may, to a certain extent, be compared with that of an ad-hoc judge of the International Court of Justice. So far, in all but one case (The Asylum Case, I.C.J. Reports, 1950) ad-hoc judges have found in favour of their own governments. It is argued that for the same psychological reasons, i.e., the fear of loss of popularity or even of their own assignments on their return to their respective countries, such judges feel obliged to find in favour of their own governments, see further R.P. Anand, The Compulsory Jurisdiction of the International Court of Justice, Asia Publishing House, 1961, pp. 107-116.
260. Article 10(6).
261. See ECOSOC's resolution 1196(XLII), paragraph 5; see also U.N. Treaty Series, vol. I, p. 15, Article VI entitled "Experts on Missions for the United Nations".

262. Article 10, paragraph 2

" The term of office of each member of the Board shall end on the eve of the first meeting of the Board which his successor shall be entitled to attend."

263. See also Article 2 of the 1972 Protocol.

264. Article 12, paragraph 2.

265. Article 12, paragraph 3.

266. Article 21, paragraph 1.

267. Article 21, paragraph 4 and sub-paragraph (b) of paragraph 1 of Article 31.

268. Article 5, paragraph 6 of the Limitation Convention of 1931 and Article 8, paragraph 7 of the 1953 Protocol.

269. It is however appreciated that until any definite criterion of the medical and scientific needs of drugs of various countries has been established, which is still an impossibility (infra), the determination of estimates by statistical means only will be inappropriate.

270. supra., p. 455

271. Article 14, paragraph 2:

" The Board, when calling the attention of the Parties, the Council and the Commission to a matter in accordance with paragraph 1(d) above, may, if it is satisfied that such a course is necessary, recommend to Parties that they stop the import of drugs, the export of drugs, or both, from or to the country or territory concerned, either for a designated period or until the Board shall be satisfied as to the situation in that country or territory. The State concerned may bring the matter before the Council."

This Article is to be read with Article 6 of the 1972 Protocol.

272. Article 21(4)(b)(ii).

273. Article 12, paragraph 3 and Article 13 of the Single Convention and Article 21 bis. of the 1972 Protocol.

274. Article 8, paragraph (b).

275. Article 8 of the Single Convention.

276. Article 8, paragraph (c) of the Single Convention.

277. The W.H.O. Expert Committees concerned with drug dependence were known until 1956 as Expert Committee on Drugs Liable to Produce Addiction, from 1956 to 1964 as Expert Committee on Addiction-Producing Drugs, and from 1964 to 1966 as W.H.O. Expert Committee on Dependence Producing Drugs. For history, terms, reference and official obligations of the Expert Committee on Habit Forming Drugs, see WHO Doc. WHO/HFD/11 dated 14 December, 1949.
278. The First Ten Years of the World Health Organization, W.H.O. publication, 1958, p. 419.
279. supra., see footnote 277.
280. WHO/HFD/11 of 14 December, 1949, p. 1.
281. op. cit., p. 4.
282. Article 11, paragraph 4.
283. Regulations for Expert Advisory Panels and Committees, see Basic Documents of the W.H.O., 1975 (25th Edition), "Definitions", p. 89; see also Resolution of the World Health Assembly 4.14 and amendment made by the Thirteenth World Health Assembly (Resolution WHA 13.49).
284. Regulation 4.6, see Basic Documents of the W.H.O., op. cit.,
285. Regulation 4.5.1.
286. Regulation 4.4.
287. Regulation 4.2.
288. Article 32 of the Constitution of the World Health Organization.
289. Regulation 5.2.
290. Regulation 5.1.

Neither the provisions of the Constitution of the W.H.O. nor the Rules of Procedure for Expert Committees and their Sub-Committees indicate the procedure for determining as to whether or not a matter qualifies for receiving special instructions or opinions from any government or authority external to the World Health Organization. However, it may be observed that the word "special" indicates that it is a matter which does not fall within the ordinary competence of such a committee, and that special instructions or opinions are required owing to the technicalities attached to a matter.

291. Rule 4 of the Rules of Procedure for Expert Committees and their Sub-Committees as adopted by the First World Health Assembly (Official Records, W.H.O., 1399, 334) and amended by the Second, Fourth and Tenth World Health Assemblies (Resolutions WHA 2.84, 4.57 and 10.45).
292. Rule 3, paragraphs (a) and (b) of the Rules of Procedure for Expert Committees and their Sub-Committees.
293. Regulation 2.3.
294. A. Loveday, Reflections on International Administration, Oxford (Clarendon), 1956, p. 188.
295. Regulation 7.2.
296. Regulation 7.3.
297. Regulations 2.1.1. to 2.1.3.
298. This Committee, however, believed that there might be some situations in which drugs might induce physical dependence more significantly than psuichic dependence. See further W.H.O. Technical Report Series, 363, 1967, p. 7.
299. W.H.O. Technical Report Series, 407, 1969, p. 6; see also 526, 1973 (Sec. 3), p. 16. According to Dr. D.C. Cameron, this definition "omits consideration of any possible need to control the production and distribution of a dependence-producing drug." See Dr. D.C.Cameron, "Drug Dependence: Some Research Issues", Bulletin of the World Health Organization, vol. 43, No. 4, 1970, p. 589.
300. W.H.O. Technical Report Series, 407, 1969, p. 6.
301. op. cit., p. 18.
302. This Expert Committee, like all other such committees, may also be assisted by an Expert Sub-Committee or a joint Sub-Committee in fulfilling its functions. Such committees may be established either temporarily or permanently by the Health Assembly or the Executive Committee at the suggestion of the Expert Committees. The rules governing the functions, . appointment of the members, election of the Chairman and the Vice-Chairman, Secretaryship and agenda shall, mutatis mutandis, apply to sub-committees. A member of an Expert Committee may not as a matter of right participate in the proceedings of a sub-committee. See Regulations 9.1., 9.2, 9.4 and 9.5.

303. The reasons for this, according to the Committee, were:

- "(1) Small changes in chemical structure may cause great changes in dependence liability;
 - (2) Drugs with different chemical structures may fall within the same pharmacological groups and cause similar types of drug dependence; and
 - (3) Within any group there is wide variation in activity and degree of abuse liability.
- Furthermore, kinds of drug dependence differing from those now known may appear in the future."

See W.H.O. Technical Report Series, 407, 1969, p. 18.

304. See further W.H.O. Expert Committee on Drug Dependence (1969), W.H.O. Technical Report Series, 407, 1969, pp. 6-7.

305. *infra.*, p. 485

306. W.H.O. Technical Report Series, *op. cit.*, p. 11.

307. Official Records of the W.H.O., 143, 1965, pp. 31-32 (Res. WHA 18.47).

308. W.H.O. Technical Report Series, 312, 1965, p. 7.

309. *op. cit.*, p. 10.

310. *ibid.*, see also Isbell and Chrusciel, "Dependence Liability of Non-Narcotic Drugs", supplement to vol. 43 of the Bulletin of the World Health Organization, 1970.

311. W.H.O. Technical Report Series, 407, 1969, p. 18.

312. *ibid.*,

313. Benzodiazepines and some long-acting barbiturates.

314. The Committee, in 1969, referred to LSD in this category, vide W.H.O. Technical Report Series, 407, *op. cit.*, p. 18.

315. *op. cit.*, p. 19.

316. W.B. Eddy, H. Halbach, H. Isbell and M.H. Seevers, "Drug Dependence: Its Significance and Characteristics", Bulletin of the World Health Organization, 1965, p. 721; see also World Health Organization Expert Committee on Dependence Producing Drugs, Fourteenth Report, Bulletin on Narcotics, vol. XVII, October-December, 1965, pp. 43-46 and W.H.O. Technical Report Series, 273, 1964, p. 15 (Annex 1).

317. U.N. Commission on Narcotic Drugs (1966), Doc. E/4294; (1968) Doc. E/4455 (Economic and Social Council Official Records); see also Permanent Central Narcotics Board and Drug Supervisory Body (1967), Final Report, Doc. E/OB/23-E/DSB/25 (Economic and Social Council Official Records).
318. One of the recommendations made by the W.H.O. Expert Committee on Drug Dependence in 1963, which was to include "a product obtained from any of the phenanthrene alkaloids of opium or ecgonine alkaloids of the coca leaf" in Schedule I of the Single Convention on Narcotic Drugs, 1961, had not been accepted by the Narcotics Commission. The Committee subsequently appreciated that the structure of a drug should not be considered to be a reliable guide to probable dependence-liability for purposes of control. See Commission on Narcotic Drugs (1968), U.N. Doc. E/4455, p. 5, E/3648; E/CN.7/432, p. 36. The original recommendation of the Committee had however subsequently been amended. See also W.H.O. Technical Report Series, 273, 1964, p. 8 and 343, 1966, p. 8.
319. See W.H.O. Technical Report Series, 57, 1952, p. 11 (sec.7); 95, 1955, p. 12 (sec. 12); 211, 1961, p. 11 (sec. 3); 273, 1964, p. 15; 312, 1965, p. 11 (sec. 9); and 478, 1971-The Use of Cannabis: Report of a W.H.O. Scientific Group. This report contains the collective view of an international team of experts, and does not necessarily represent the decisions of the W.H.O.
On coca leaves and cocaine, see W.H.O. Technical Report Series, 312, 1965, p. 10 (sec.8) and 273, 1964, p. 6(sec.2).
320. On Methadone Maintenance the Committee reviewed its previous recommendations, and subsequently confirmed that as several methods of use had been devised, and as persons taking it regularly might have a dependence of the morphine type, it would be necessary to keep in view the question of final withdrawal of it from these patients.
See WHO Technical Report Series, 343, 1966, p. 9 (sec.6); see also Sixteenth Report of the WHO Expert Committee on Drug Dependence, WHO Technical Report Series, 407, 1969, pp. 20-21.
The Expert Committee also reviewed the First Draft Protocol and the Revised Draft Protocol on Psychotropic Substances. See U.N. International Narcotics Control Board (1968), First Report, Doc. E/INCB/1 (ECOSOC: Official Records); 1969 Doc. E/4606/Rev.1., p. 71 (ECOSOC:Official Records); and p. 106 (Annex IV). The Expert Committee on Drug Dependence pointed out that " (a) since the term "psychotropic" has come to be widely applied to a large class of drugs used extensively in medical therapy and (b) since many of these drugs do not produce drug dependence, there was considerable likelihood that the use of the unqualified, broad term "psychotropic" to designate only the dependence-producing members of the larger class would lead to confusion and

320. misunderstanding on the part of persons not familiar with the details of the Protocol. The Committee therefore suggested that consideration be given to the addition of a qualifying term, such as "dependence producing", when speaking of psychotropic substances to be controlled under the Draft Protocol." W.H.O. Technical Report Series, 437, 1970, p. 9 (para 3).
321. For example, regarding the need for control measures for certain psychotropic substances not under international control, see WHA Resolution 21.42, Official Records of the W.H.O., 168 (Twenty-first World Health Assembly, Part I), p. 20.
322. The Expert Committee on Drug Dependence emphasised once again that a qualifying term such as "dependence producing" would be most necessary when control measures for "psychotropic substances" under the Protocol would be considered, see W.H.O. Technical Report Series; 437, 1970, p. 9 (sec. 3), and 460, 1970, p. 7 (sec. 2).
323. W.H.O. Technical Report Series, 460, 1970, p. 7 (sec. 2).
324. See also Article 14(1)(b) of the 1972 Protocol amending Article 36, paragraphs 1 and 2 of the Single Convention.
325. See further W.H.O. Technical Report Series, 57, 1952, p. 11 (sec.8); 76, 1954, p. 11 (sec. 8); 116, 1957, p. 10 (sec. 10); 273, 1964, p. 11 (sec. 7); 312, 1965, p. 9 (sec. 7); 343, 1966, p. 11 (sec. 8) and 407, 1969, p. 17 (sec. 3). See also Official Records of the WHO 1965, 143, 31 (WHA Res. 18.47); 1967, 160, 26 (WHA. Res. 20.42 and WHA 20.43); and 1968, 168, 20 (WHA. Res. 21.42).
326. W.H.O. Technical Report Series, 407, 1969, p. 11 (sec. 1.4), op. cit., p. 94.
327. op. cit., p. 18. (sec. 3).
328. ibid.,
329. W.H.O. Technical Report Series, 437, 1970, p. 11 (sec. 4.1.)
330. Group (b): " Drugs extensively used in medical practice, or with the potential for such use, but also presenting a substantial risk to public health. This group might include certain drugs that produce barbiturate or amphetamine type dependence. Such drugs would be available under strict control for medical practice." W.H.O. Technical Report Series, 407, 1969, pp. 18-19 (sec.3)
331. infra., pp. 486 - 487
332. W.H.O. Technical Report Series, 437, 1970, p. 11.

333. WHO Technical Report Series, 437, 1970, pp. 11-12, and 407, 1969, pp. 18-19.
334. WHO Technical Report Series, 437, op. cit., p. 12.
335. The data assembled on each of the drugs included information on the following: "(a) name. (b) structural chemical formula. (c) symptoms of intoxication, (d) tolerance (e) psychic dependence (f) physical dependence (g) certain pharmacological characteristics (h) major dangers of abuse and (i) a tentative abuse- political rating, together with appropriate references in several languages."
WHO Technical Report Series, op. cit., p. 12.
336. op. cit., p. 13 (*italics added*).
337. *ibid.*,
338. *supra.*, pp. 486-487
339. WHO Technical Report Series, 437, op. cit., p. 18
340. WHO Technical Report Series, 407, 1969, p. 19.
341. WHO Technical Report Series, 437, 1970, p. 19.
342. As to the nature of the broad control to be applied to group (e) preparations, the Committee suggested that manufacturers be licensed, and that complete records be kept as to (1) the amount of the basic drug used in their manufacture (2) the nature of the properties, and (3) the initial disposal of such properties. The Committee also suggested that the amount of drugs belonging to groups (b) and (c), utilised in making group (d) preparations, be reported to existing international organs.
See WHO Technical Report Series, op. cit., p. 20.
343. *ibid.*,
344. WHO Technical Report Series, 526, 1973, p. 7.
345. op. cit., p. 8.
346. *infra.*, pp. 501-504
347. WHO Technical Report Series, 312, 1965, p. 11.

348. "Drug monitoring is defined as the systematic reporting, recording, and evaluation of adverse reactions to drugs generally available with or without prescription." Information on adverse reactions may be made available either through voluntary reporting, by practising doctors and hospitals, to designated centres, or by epidemiological techniques "aimed at systematic coverage of separate hospitals, representative samples as of the physician population etc." The former type of monitoring is known as "spontaneous monitoring" and the latter as "intensive monitoring".
See further WHO Technical Report Series, 425, 1969, p. 6; see also Res. WHA 20.51 (Handbook of Resolutions and Decisions, 11th edition, 1971).
349. WHO Technical Report Series, 312, 1965, p. 11.
350. WHO Technical Report Series, 425, 1969, p. 7.
351. *ibid.*,
352. See further WHO Technical Report Series, 498, 1972, especially at pp. 23-24.
353. WHO Technical Report Series, 363, 1967.
354. WHO Technical Report Series, 9, 1950.
355. WHO Technical Report Series, 363, 1967, pp. 7-8.
356. *op. cit.*, pp. 8-17; see also 437, 1970, p. 8 and 460, 1970, p. 8.
357. WHO Technical Report Series, 407, 1969, p. 14; see also D.C. Cameron, "Abuse of Alcohol and Drugs: Concepts and Planning", WHO Chronicle, vol. 25, No. 1, pp. 8-16.
358. See further U.N. Commission on Narcotic Drugs, Report of the Twenty-second Session, (Economic and Social Council, Official Records), U.N. Doc. E/4455.
359. See also WHO Technical Report Series, 273, 1964, p. 13 (Annex 1); and N. Eddy, H. Halbach, H. Isbell and M. Seevers, *op. cit.*, Bulletin of the World Health Organization, 1965, p. 721.
360. The main principle behind the maintenance programme is to determine whether some of the pathological effects of drug dependence may be alleviated without necessarily achieving full recovery on the part of the addict.
See WHO Technical Report Series, 460, 1970, sec. 3.3.2; see also 437, 1970, p. 25 (sec.8); 407, 1969, p. 20 (sec.6); and 343, 1966, p. 9 (sec. 6).
361. See, in general, WHO Technical Report Series, 460, 1970.
362. *supra.*, footnote 318 and pp. 501-504

363. WHO Technical Report Series, 116, 1957, p. 11
364. WHO Technical Report Series, 142, 1958, p. 11; 160, 1959, p. 10. 14(Annex 2); 229, 1962, p. 12; 273, 1964, p. 11 and 312, 1965, p. 12; see also Reports of the WHO Expert Committee on Mental Health, WHO Technical Report Series, 363, 1967, p. 24 et. seq.,
365. WHO Technical Report Series, 526, 1973, p. 35.
Of the existing information. storage and retrieval systems, mention should be made of the index of the Pharmacology of the opium alkaloids, and the U.N. Narcotics Laboratory, apart from such laboratories in Canada, U.K. and the U.S.A.
See further H. Krueger, N. Eddy and M. Sumwalt, "The Pharmacology of the Opium Alkaloids", 1941, Washington, D.C. U.S. Public Health Service (U.S. Public Health Reports, Suppl. 165, 2 vols.)
366. WHO Technical Report Series, 131, 1957, p. 7.
367. WHO Technical Report Series, 437, 1970, pp. 24-25.
368. op. cit., p. 25.
369. ibid.,
370. WHO Technical Report Series, 460, 1970, p. 15 et. seq.,
371. See further "UN/Thai Programme for Drug Abuse Control in Thailand", Progress Report No. 1 (Sept. 1972- June 1973), U.N. Doc. NAR/THA 1; See also Bulletin on Narcotics, vol. XXVI, No. 1, 1974, pp. 63-64.
372. WHO Technical Report Series, 551, 1974, p. 85.
373. WHO Technical Report Series, 363, 1967, p. 35 et. seq.,
374. op. cit., p. 36.
375. See also Report of a WHO Scientific Group on the Use of Cannabis, recommendations had been made for multi-disciplinary research centres and information resources, WHO Technical Report Series, 478, 1971, p. 38.
376. See also WHO Technical Report Series, 425, 1969, p. 20; and 460, 1970, p. 35.
377. op. cit., pp. 39-41.
378. WHO Technical Report Series, 407, 1969, p. 22.
379. WHO Technical Report Series, 460, 1970, p. 33.
380. op. cit., pp. 34-37.
381. op. cit., p. 64.

382. WHO Technical Report Series, 551, 1974.
383. op. cit., p. 8.
384. The broad measures suggested by the Committee were:
To limit the availability of specified dependence-producing drugs, to reduce social acceptance of, interest in, and demand for dependence-producing drugs, to modify the interests and attitudes of persons at high risk of using dependence-producing drugs in a manner likely to be associated with personal and social problems, so as to reduce the probability of such use, and to reduce the incidence and severity of complications (mental, physical, behavioural, social etc.) experienced by persons involved in the non-medical use of dependence-producing drugs.
op. cit., especially, at pp. 33-35.
385. WHO Technical Report Series, 551, 1974, pp. 34-35; see also "Problems of Non-Medical Drug Use", WHO Chronicle, 29, 97-101(1975).
386. United Nations Educational, Scientific and Cultural Organization (1973), Report of Meeting on Education in More-Developed Countries to Prevent Drug Abuse, Paris 11-20 December, 1972 (ED/MD/26), p. 8.
387. WHO Technical Report Series, 551, 1974, pp. 48-49.
388. Social control may be either primary or secondary. While primary control stems from family or person-to-person relationships, secondary control derives from the laws, customs and mores of the community in which a person customarily lives, op. cit., p. 21.
See also T. Asuni, "Socio-Psychiatric Problems of Cannabis in Nigeria", Bulletin on Narcotics, 1964, vol. XVI, pp. 17-28 and L.N. Robbins, A Follow-up of Vietnam Drug-Users, interim final report, Washington, D.C. Special Action Office for Drug Abuse Prevention (Special Action Office Monograph, Series A, 1).
389. WHO Technical Report Series, 551, 1974, p. 51 et. seq.,
390. op. cit., p. 49.
391. See also Article 8 of the International Opium Convention, 1925.
392. Articles 8 and 10 as amended. Incidentally, prior to the 1946 Protocol, the Health Committee of the League had been authorised to take decisions in these matters.
393. Article 11, paragraphs 3 and 4 as amended by the Protocol of 1946. Prior to this Protocol, the Health Committee of the League and ad hoc committees had been authorised to take decisions in these matters.

394. Article 3, paragraphs 3(iii), 4, 5 and 6.
395. See Article 2, paragraphs 4, 5 and 6.
396. See further Claude-Henri Viganes, "La Convention sur les Substances Psychotropes", XII Annuaire Français de Droit International, 1971, pp. 641-656, at pp. 644-645.
397. Certain committees operating within some of the specialised agencies of the U.N. have a different character from that of the W.H.O. Expert Committees, e.g. the Regional Commissions of the Economic and Social Council of the United Nations are of a political character.
398. Since, by nature, it is an ad hoc committee, the regular routine tasks which are relevant to its work are, in its substance, performed by the Secretariat of the W.H.O. Hence there seems to be room for argument that an Expert Committee may in certain cases form its opinions on the basis of the work done by the Secretariat. This situation also gives rise to the question whether it is appropriate to give much weight to the opinions rendered by such committee which meets only occasionally and for short periods.
399. For example, all advisory committees of the International Civil Aviation Organization are composed of government representatives.
400. H.G. Schermers, International Institutional Law (vol. I), A.W.Sijthoff, 1972, p. 100.
401. As experts are selected by the Director-General of the World Health Organization, it may be relevant to point out that the selection of such experts may be motivated by the exclusive individual considerations of the Director-General himself.
- In selecting such experts, caution should be exercised in approaching a government. In fact, it may not be advisable at all for the appointing authority to approach a government for an expert, because although a senior official, by virtue of his holding a very high position in his own service, may expect to be nominated, he may not be the right person for such an assignment. His government, however, on being approached, may be obliged to nominate him. All complications and embarrassment can be avoided if the appointing authority has the skill "to find the right man and inquire whether in the event of his services being required on a committee he could be released."
- During the League period, various rapporteurs submitted names of various candidates to the League Council for its

consideration. On a discussion between the rapporteurs and Directors a tentative list of candidates was prepared, which when received the Secretary-General's authorisation, allowed the Director concerned to get in touch with the respective government representative(s).

The Director-General of the International Labour Organization also submits names for the expert committees directly to the Governing Body, which do not usually question any such proposal.

402. G. Schwarzenberger, Power Politics: A Study of World Society, (2nd edition), Stevens, 1951, p. 683.

403. H.G. Schermers, op. cit., p. 104.

404. According to Loveday, one way of deciding whether or not to appoint government representatives to a committee is that whenever a council "in order to save its own time or for any other reason has occasion to seek as formal an agreement as possible among governments, whether those represented on it or others, it is natural that it should appoint a committee of governments in preference to an advisory committee of experts. The function of such a committee is to negotiate rather than advise."

A. Loveday, op. cit., p. 164.

The Fiscal Committee of the League of Nations was also composed mainly of government representatives for obvious reasons. Its function was primarily to devise methods for reducing the burden of double taxation. In view of the complexities of the problems, and also in view of the immediate financial bearing upon various governments, the participation of government officials in such a committee was found necessary.

405. A. Loveday, op. cit., p. 32.

406. According to Loveday, the major conditions for the success of the work of an international advisory committee are:

- (a) that the committee acquires a corporate sense, a pride in itself, and a consciousness of its responsibilities;
- (b) that its members are competent to deal with the subjects on its agenda;
- (c) that owing to the personalities which compose it and/or to the standard of its reports it has sufficient authority to induce those to whom its reports are submitted (and in the last instance governments) to act on its advice;
- (d) that the committee members receive in adequate time before their meetings carefully prepared memoranda, which at once summarize the essential facts relevant to the points on the agenda and constitute a guide to their discussions.

A. Loveday, op. cit., pp. 154-155.

407. All standing advisory committees shall have the power to advance suggestions/advice and, in fact, this advisory function is a continuing process, in the sense that in many cases advice is given in continuation or on the basis of previous suggestions or advice. Also, such a committee may keep a matter under review and put forward suggestions regularly.
408. The ad hoc committee system is very predominant within the International Labour Organization.

CHAPTER VIAN EXAMINATION OF THE DRUG PROTOCOLS
CONCLUDED DURING THE U.N. PERIOD
(PRIOR TO THE SINGLE CONVENTION
ON NARCOTIC DRUGS, 1961.)Introduction

In this chapter the Protocols concerning the suppression of the illicit traffic in narcotic drugs, which have been concluded during the United Nations period, have been examined. The Protocols which have been concluded during this period are the following:

- (a) The "1946 Protocol", Amending the Agreements, Conventions and Protocols on Narcotic Drugs, concluded at the Hague on 23rd January, 1912, at Geneva on 11th February, 1925 and 19th February, 1925 and 13th July, 1931, at Bangkok on 27th November, 1931 and at Geneva on 26th June, 1936, signed at Lake Success, New York, on 11th December, 1946 referred to in Article 44, paragraph 1, subparagraph (f) of the Single Convention.
- (b) The "1948 Protocol", Bringing under International Control Drugs Outside the Scope of the Convention of 13th July, 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs,

as Amended by the Protocol signed at Lake Success, New York, on 11th December, 1946, signed at Paris on 19th November, 1948, referred to in Article 44, Paragraph 1, Subparagraph (h) of the Single Convention ; and .

(c) The "1953 Protocol" Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, signed at New York on 23rd June, 1953, referred to in Article 44, Paragraph 1, Subparagraph (i) of the Single Convention.

As the Single Convention replaced these Protocols, only the most important aspects of these instruments will be given.

(a) The "1946 Protocol"¹

The reasons for concluding this Protocol are mentioned in its Preamble. The Parties to this Protocol, considering that it would be appropriate for the performance of certain duties and functions relating to narcotic drugs, with which the League had been invested, to be continued even after its dissolution, found it expedient that "these duties and functions should be performed henceforth by the United Nations and the World Health Organization or its Interim Commission. " The Parties to this Protocol therefore undertook that as among themselves they would, each in respect of the instruments to which it was a party, and in accordance with the provisions of this Protocol, attribute full legal force to them.²

As for machinery of operation of the relevant Conventions, it was decided that the Permanent Central Board and the Supervisory Board should be continued, and that the Secretary-General of the United Nations should replace the Secretary-General of the League of Nations. This Protocol was open for signature or acceptance by any of the states Parties to the Agreements, Conventions and Protocols on narcotic drugs on 23rd January, 1912, 11th February 1925, 19th February, 1925, 13th July, 1931, 27th November, 1931 and 26th June, 1936. It was decided that the Protocol should come into force in respect of each Party on the date upon which it had been signed on behalf of that Party without reservation as to approval, or on the date upon which an instrument of acceptance had been deposited. The amendments set forth in the Annex to the Protocol were to come into force in respect of each Agreement, Convention and Protocol when a majority of the Parties thereto had become Parties to the Present Protocol.³

This Protocol did not make any major change in the content of the previous international narcotic treaties and agreements. It mainly substituted the names of the new institutions for the corresponding old ones, and made certain obvious amendments which became necessary for making the provisions of a Convention applicable under the new situation. It was, in fact, a link-protocol.

(b) The "1948 Protocol"

This Protocol was a Protocol of necessity. The progress of modern pharmacology and chemistry which had resulted in the discovery of drugs, particularly synthetic drugs, capable of producing addiction, but not covered by the Limitation Convention of 1931, and also the need for a universal application of this agreement by supplementing its provisions prompted the Parties to conclude this Protocol.⁴ This Protocol did not apply to raw opium, opium, coca leaf or Indian hemp as defined in Article 1 of the 1925 Convention, or to prepared opium as defined in Chapter II of the Hague Convention of 1912.⁵ It was a timely protocol, and like many other international conventions and protocols, its conclusion had been preceded by a lengthy discussion at the General Assembly of the U.N.,⁶ especially on the failure of national governments to undertake obligations in this regard and implement them effectively. In addition to this, the existing machinery of control was found inadequate to cope with the increasing number of newly manufactured addiction-producing drugs which flooded the post Second World drug market.⁷ The gravity of this situation and the adequacy of the existing control system had been rightly summarised by the U.N. authorities in the following text:

" After the War, these problems were explored. First of all, synthetic

narcotics needed to be brought under international control, but as things stood this could be done only by means of Article 10 of the 1925 Convention. A way had to be found to extend the control system of the 1931 Convention to cover them. Secondly, their provisional control, prior to a decision by the World Health Organization, presented a specially difficult problem. As yet, there was no way of delimiting these drugs in advance and it was often a time-consuming procedure for the governments of drug-manufacturing countries to determine definitely whether a new analgesic was addiction-producing or not. Thirdly, the whole concept of convertibility needed reappraisal. Modern chemistry could create narcotic drugs out of many common chemicals; was it practicable for all these to be placed under narcotics control? From this it followed that special control measures might have to be devised for these drugs, which could or might soon be manufactured illicitly with greater ease than the traditional narcotics, since it would no longer be necessary to smuggle opium or coca leaves over long distances for this purpose." ⁸

In order to remedy this situation, the Secretariat, in its memorandum entitled " Study of Measures to be taken with a view to bringing under international control Narcotic

Drugs not covered by Conventions at present in force"⁹

drew the attention of the Commission to the question as to which of the two methods, i.e (a) to amend Article 10 of the 1925 Convention and Article 11 of the 1931 Convention or (b) to conclude a separate instrument by which synthetic narcotics might be placed under mandatory full-scale international control, would be more appropriate. After considering the expert opinions¹⁰ of various representatives, the Commission decided¹¹ that it would be more appropriate to conclude a separate instrument in this regard, and the Paris Protocol was concluded on 19th November, 1948.

Although the Commission generally agreed to the suggestion of the Secretariat that a separate instrument would serve the purpose of bringing all new substances under it more effectively, it accepted the Secretariat's memorandum in this regard subject to certain modifications.¹² Most of the countries, whose opinions on different points had been invited by the Commission, appeared to agree with the views of the Commission, and recommended the urgent adoption of such a Protocol.

Most of the important countries, i.e., the manufacturers and users of drugs, showed an inclination to give more powers (viz. in placing new drugs under control) to the Commission rather than to the World Health Organization, as the former could act more rapidly than the latter.¹³

The Commission not only decided to retain the power to place new drugs under a provisional control pending action by the World Health Organization, but also made such power mandatory rather than recommendatory.¹⁴

However, owing to its importance and timely appearance, the Economic and Social Council, at the proposal of the Commission, adopted a draft resolution to urge all States to adhere to this Protocol as soon as possible, and also to extend the application of it to territories for whose foreign relations they were responsible, subject, of course to the constitutional restrictions.¹⁵ This Protocol came into force on 1st December, 1949.

This Protocol attained satisfactory although not extraordinary success. All principal drug-manufacturing countries became Parties to this Protocol. Many countries which did not accede to the Protocol, co-operated in the application of its provisions within their territories,¹⁶ and even submitted estimates of their needs for synthetic drugs to the Supervisory Body; and placed synthetic drugs of varying numbers under national narcotics control regimes.¹⁷ Indeed the representative of China evaluated the Protocol by describing it as a "turning point in the campaign against the ever present danger of the abuse of narcotic drugs and drug addiction."¹⁸

Comments The Paris Protocol was not devoid of shortcomings. Unlike the Limitation Convention, this Protocol did not require governments to place drugs under national control from the time of commencement of their manufacture. Consequently, the time-lag between the commencement of manufacture and action by the Commission or the W.H.O. as the case might be, would have contributed to the abuse of drugs.¹⁹

The growing developments in chemistry and pharmacology had already proved unrealistic the traditional concept of control of all substances convertible into addiction-producing drugs.. The 1953 Protocol did not make any attempt to complement the provisions of the 1931 Convention in this regard. The concept of "convertibility" as used in narcotic treaties, should be given a flexible interpretation because "there are many factors to be weighed-the ease with which convertibility can be effected, the usefulness of the substance for say, industrial purposes, and the feasibility of controlling it from the administrative or technical standpoints. In this connection, too, the possibility of further scientific advances has to be borne in mind."²⁰ Indeed, the World Health Organization, at its Seventh Assembly, confirmed that a substance would be considered as convertible "where the ease of conversion and the yield obtained constitute a risk to public health, and that in cases where there is uncertainty as to whether a substance will fall under this

definition, the substance will be considered as 'convertible' rather than as 'not convertible'.²¹

This Protocol was by no means an exception to the general attitude prevailing among nations in binding themselves under an international instrument. This Protocol also evidenced the general lack of desire of nations to bind themselves by an international instrument and this found expression in their hesitancy in accepting the "territorial clause" which had been adopted by a vote of 33 to 8, with 12 abstentions.²² This Protocol follows the usual pattern of most of the conventions concluded during the League period in that it maintained a "denunciation clause", according to which, "after the expiration of five years from the date of the coming into force of the Protocol, any State Party to the present Protocol may, on its own behalf or on behalf of any other territories for which it has international responsibility, denounce this Protocol by an instrument in writing deposited with the Secretary-General of the United Nations...".²³ The Paris Protocol should be taken only as a step forward, rather than as a final answer to the drug problem.

(c) The "1953 Protocol"²⁴

The title of this Protocol suggests that it was concluded for limiting and regulating the cultivation of the opium plant, and the international and wholesale trade in, and use of, opium. This Protocol was a revelation of the gaps left by the previous

narcotic agreements, protocols and conventions in the limitation of the production of raw materials for the manufacture of narcotic drugs- and this found expression in the third paragraph of the Preamble, which stated that " it is essential to limit to medical and scientific needs and regulate the production of the raw materials from which natural narcotic drugs are obtained" and, therefore the Contracting Parties emphasised that the most urgent problems were those of the control of the cultivation of the poppy and of the production of opium. The other purposes of the Protocol, which had been expressed by the Contracting Parties in its first and second paragraphs, were, to continue their efforts to combat drug addiction and illicit traffic in narcotic substances by close collaboration among all states,²⁵ and to strengthen the system of narcotics control at both the national and international levels, which had been established for and directed towards this end.²⁶

(i) A Critical Examination of the Protocol ²⁷

It appears that the Protocol made references to "poppy" and "opium" only, as raw materials, and did not make any mention of the other two raw materials, viz. coca leaf and Indian hemp (marihuana, hashish and cannabis) and indeed, the term " production" in so far as this Protocol was concerned, meant only " the cultivation of the poppy with a view to harvesting opium." For the purpose of this Protocol, "poppy" had been defined as " the plant *papaver somniferum* L., and any other species of *Papaver* which may be used for the

production of opium". The expression "any other species of Papaver" indicated that control would be extended beyond the ordinary opium poppy.

Apart from a Chapter on "Definition", this Protocol consisted of four other Chapters, Viz.

- Chapter II Regulations of the Production and Use of Opium,
and Trade in Opium.
- Chapter III Information to be Supplied by Governments
- Chapter IV International Supervision and Enforcement Measures
- Chapter V Final Articles (e.g. means of implementation, disputes
signature, ratification etc.).

It may be observed that in drafting this Protocol the usual pattern of the previous narcotic conventions (e.g. the 1925 and 1931 Conventions) was followed. It is appropriate however, to give a brief survey of the major provisions of this Protocol.

Chapter II Regulation of the Production and Use of Opium,
and Trade in Opium.

In Article 2 the Parties had undertaken to use opium exclusively for medical and scientific needs. For the purposes of control in the producing states, this Protocol laid emphasis on the establishment of national agencies or other similar competent government authorities. Such institutions were given the right even of purchase of opium crops from all cultivators in their

respective designated areas as soon as possible, and of importation, exportation and wholesale trade as regards such crops. The Parties also undertook the obligation to cultivate and use the poppy for the purposes of production of opium poppy only, and to ensure that the manufacture of narcotic substances from poppy straw was adequately controlled.²⁸ Provisions for the usual accountability to the Permanent Central Board were maintained. In order to strengthen the control system, the Protocol made provisions for the limitation of stocks of opium very much along the lines of those adopted in the Limitation Convention, in respect of the limitation of the manufacture of synthetic drugs. The Board had been entrusted with the task of determining the requirements of opium in a country. In order to enable the Board to give consideration to this matter, the Parties were required to supply the required information and details of their requirements to the Board by certain time. In the event of the failure of a country to comply with this condition, the Board was authorised to determine the requirements of such a country without further communication with that country, but after giving due consideration to the information at its disposal, to the aims of this Protocol and to the interests of the Party.²⁹ Where a reduction in the stock of opium of a country in excess of the maximum level permitted by this Protocol, was found necessary, the Board in the exercise of

its discretion, was authorised to take economic realities into consideration,³⁰ where necessary, and in exceptional circumstances it could exempt a country from compliance with the requirements as to the maximum level of opium stocks.³¹

In Article 6 the Parties undertook to limit the import and export of opium exclusively to medical and scientific purposes. The same Article provided that the import and export would be permitted, of opium produced in certain designated countries, viz. Bulgaria, Greece, India, Iran, Turkey, U.S.S.R. and Yugoslavia. Not only was the importing and/or exporting country required to be a party to the Protocol, but the Parties also would not permit the import of opium from any state which was not a Party to the Protocol.

The Parties not only agreed to apply the system of import certificates and export authorisations provided for in chapter V of the International Opium Convention, 1925, but also left the door open for conditions more restrictive than those required by chapter V of this Convention, should any of them so desire. This Protocol, however, excluded the application of Article 18 of the International Opium Convention, 1925.³² The Protocol provided for the destruction of all opium seized in the illicit traffic or for the conversion by a Party, in whole or in part, under government control, of the narcotic substances contained in

such opium into non-narcotic substances, or for the appropriation in whole or in part, of such opium or the alkaloids manufactured therefrom for medical or scientific use by or under the control of the government.³³ Seized opium which could be identified as having been stolen from a government or licensed warehouse had to be returned to its lawful owner.

Chapter III Information to be Supplied by Governments

This Protocol required the governments to supply the Permanent Central Board with information on estimates of their requirements of opium, and statistics showing the extent of the area on which poppy had been cultivated with a view to harvesting opium and the amount of opium harvested thereon ; the amount of opium consumed;³⁴ the amount of opium used for the manufacture of alkaloids and opium preparations, including the quantity required for the manufacture of preparations for the export of which authorizations were not required, whether such preparations were intended for domestic consumption or for export, in accordance with the International Opium Convention of 1925 and the Limitation Convention of 1931; the amount of opium seized in the illicit traffic, the amount disposed of, the method of disposal and the statistics showing the stocks held on the preceding 31 December. In this regard, this Protocol basically followed the system which had been adopted in the Limitation Convention of 1931. The provisions concerning both the usual and the supplementary statistics basically followed the pattern established in the Limitation

Convention. This Protocol included the quantity of opium that would be required for the manufacture of preparations which had been excepted under Article 8 of the International Opium Convention of 1925.³⁵ The rules regarding exports of opium were meant to be relaxed where such relaxation would be necessary " in the interests of humanity or for the treatment of the sick." ³⁶ The responsibility of examining estimates and acquiring any information concerning this matter lay with the Supervisory Body, whereas the overall responsibility relating to " estimates and statistics" rested upon the Permanent Central Board . The Parties were required to submit annual reports, in accordance with the form prescribed by the Commission, to the Secretary-General, on the measures adopted by them for the proper implementation of the Protocol in their respective territories.³⁷ The Parties also undertook to furnish the Secretary-General with additional information regarding any important changes concerning the implementation of this Protocol in their respective territories.

Chapter IV International Supervision and Enforcement Measures

This Protocol made detailed provisions regarding international supervision and enforcement measures. International supervision, under this Protocol, consisted of certain administrative measures, viz., (a) request for information, (b) request for explanation, (c) proposal of remedial measures and (d) local inquiry.

All these measures were aimed at the most extensive and effective implementation of the provisions of this Protocol, not by coercive measures, but by co-operation- by making appropriate suggestions to the Parties concerned (Article 11(1)(a)), by requesting a confidential explanation from the Party concerned (Article 11(1)(b)), by calling upon the governments to study the possibility of adopting such remedial measures as the situation might require (Article 11(1)(c)), and even by means of a local inquiry in collaboration with officials designated by the government concerned, where such an inquiry would in the opinion of the Board appear to contribute to the elucidation of the situation and if the government concerned expressly consented to such an inquiry (Article 11(1) (d)).

It may, however, be observed that the "enforcement measures" ³⁸ as enunciated in this Protocol, presented an innovation. These measures consisted of public declarations, recommendatory embargo, mandatory embargo, procedural safeguards and universal application. Public declaration was to be operative if the Board found that the failure of a Party to carry out provisions of the Protocol was seriously impeding the control over narcotic substances in any territory whether that of a Party to the Protocol or not. It consisted of two stages, viz., (a) public notification, i.e., by a notification of the Board calling the attention of all Parties and of the Council to the matter, and (b) public statements, in the event that the action taken by the Board by means of public notification, did not produce the desired effect. If however the Board had made a public statement, it would also publish the views of the government

concerned if the latter so requested. The provision for the imposition of an embargo in two stages, i.e., recommendatory and mandatory, introduced a new feature in that the process of sanction was made cumulative. A situation of "recommendation of embargo" pre-supposed (a) a failure of a Party to fulfil its obligations under Articles 8 and 9 of the Protocol, or the irresponsible behaviour of any other state which was seriously impeding the effective administration of statistics and estimates by the Board, or (b) when, in the light of the information at the disposal of the Board, it appeared that excessive quantities of opium were accumulating in any country or territory or that there was a danger of any country or territory becoming a centre of illicit traffic. In the event of any of these situations the Board was authorised to recommend to the Parties an embargo on the import of opium, the export of opium, or both from or to the country or territory concerned, either for a designated period, or until the Board was satisfied that the opium situation in that country or territory had been improved. The state concerned however was given the right to bring the matter before the Economic and Social Council in advance, in accordance with the relevant provisions of Article 24³⁹ of the International Opium Convention of 1925.

The mandatory embargo consisted of three parts, viz., (a) announcement of and imposition of embargo, (b) appeal, and (c) execution of the embargo. The mandatory embargo again was devised to be cumulative in its application, since, in accordance with Article 12 (3)(a)(i) of the Protocol, the Board might, on the

basis of the findings made under sub-paragraphs (a) or (b) of paragraph 2 of this Article, announce its intention to impose an embargo on the import of opium or the export of opium or both from or to the country or territory concerned. Should, however, this action fail to produce any effect, the Board, on notifying the state concerned and the Secretary-General of its decision, could impose an embargo, either for a definite period, or until it was satisfied as to the situation in the country or territory concerned. The decision of the Board in this regard was to remain confidential and would not take effect before sixty days after its arriving at this decision, unless notice of appeal was given by the state concerned, and the event of such a notice, the embargo would come into force thirty days after the withdrawal of the appeal or after a decision of the Appeals Committee upholding the embargo in whole or in part.⁴⁰

The novelty of the mandatory embargo lay in its provisions for an appeal. In terms of Article 12 (3)(b)(i), a state in respect of which a decision to impose a mandatory embargo had been taken, might, within thirty days of receipt of such decision, notify the Secretary-General confidentially, in writing, of its intention to appeal. The accused state was allowed to adduce its grounds of appeal, in writing, within another thirty days. Such an appeal was to be heard by an Appeals Committee appointed by the Secretary-General, and the decision of this Committee was to be taken as final and binding. The decision of this Committee was required to be forwarded by the Secretary-General to the appellant state and to the Board. The time by which the embargo would take effect was, therefore, dependent upon

whether or not the state concerned had appealed.

Decisions of the Board concerning matters relating to Article 12 were to be made by a majority of the whole Board. The state concerned was granted the right of hearing before the Board decided to impose an embargo. One of the remarkable features of this Protocol was that it made a provision for its universal application. Article 13 of the Protocol provided that the "Board may also, if possible, take the measures referred to in this chapter,⁴¹ in respect of States which are not Parties to this Protocol, and in respect of territories to which, under article 20, this Protocol does not apply."

Chapter V Final Articles

The Final Articles provided for the usual concluding provisions of a multilateral convention. However, as far as the measures for implementation of the provisions of this Protocol were concerned, it was left to the Parties to adopt legislative and administrative measures necessary for the purpose of making the provisions of the Protocol fully effective.⁴² Unless the Parties agreed to another mode of settlement, all disputed between two or more Parties relating to the interpretation or application of this Protocol were to be referred to the International Court of Justice. Accession to the Protocol was open to the Members of the United Nations, and also to any non-Member state which, in accordance with the instruction of the Economic and Social Council, had been invited to participate in the Conference

(i.e., the conference which drew up this Protocol) and any other state to which the Secretary-General, at the request of the Economic and Social Council, had sent a copy of this Protocol.⁴³ Article 19 of the Protocol provided for "Transitional Measures" by any Party on special grounds, viz., indispensability of opium for quasi-medical purposes, and on an undertaking that the use, production, import and export of opium for quasi-medical purposes would not be extended beyond a certain period of time etc.

(ii) Comments

The 1953 Protocol was concluded with a view to taking the "Opium War" a step further. This Protocol was of limited scope in that it concerned itself only with combating the illicit traffic in opium and other related matters, and it was characterised by the basic traits of the other existing drug conventions, and especially the Limitation Convention. However, this Protocol, made a renewed effort to deal with the opium problem, and in indeed, the Preamble to the Protocol referred not only to limitation, but also to regulation, which in addition to quantitative limitation meant government control over cultivation, production, trade in and use of opium.⁴⁴ "Opium" within the meaning of the Protocol included "poppy" also. The terms "narcotic substances", "narcotic alkaloids" or other similar expressions were used to denote the drugs derived from opium. The expression "illicit traffic in narcotic substances", as used in the Preamble,

must have been used to include raw, medicinal and prepared opium, whereas the expression "natural narcotic drugs" stood for "raw materials from which natural narcotic drugs are obtained", i.e., manufactured drugs.

The undertaking of the Parties in Article 2 of this Protocol to limit the use of opium exclusively to medical and scientific needs was a "loose undertaking" since a precise determination of the medical and scientific needs of a country was fraught with difficulties.⁴⁵ In Article 4 of the Protocol, however, the Parties made a direct attempt to control the cultivation of the poppy plant for purposes other than the production of opium. This, the writer observes, was the first attempt of its kind, and the provisions of Article 4 indirectly implied that even at the time this Protocol was drafted, cultivation of the poppy plant for purposes other than the production of opium was permissible in some countries. Although international trade in opium had been limited to that produced in seven countries,⁴⁶ such restrictions were applicable only to the Parties to the Protocol. The possibility of a universal application of this Protocol, as envisaged in Article 13, was remote, especially in view of the existing nature of the contemporary international legal order, and indeed, this Article provided that the "Board may also, if possible,⁴⁷ take the measures referred to in this chapter, in respect of states which are not Parties to this Protocol." The success of the embargo provisions, which represented a new feature in the Protocol very much depended upon the degree of co-operation of the Contracting Parties. The primary purpose of imposing an embargo would seem to have been defeated by the delaying procedure of its actual execution.⁴⁸ The

measures required to be adopted for the implementation of the Protocol had been left to the Parties.⁴⁹ In other words, the Parties⁵⁰ were given a certain freedom of action as was clear from the expression, " ...shall adopt all legislative and administrative measures necessary for the purpose of making fully effective the provision of the Protocol." The adoption of such a provision at a time when a considerable lack of understanding prevailed between the producing and the manufacturing countries only added to the uncertainty of success in attaining the desired limitation.⁵¹

This Protocol was the first international instrument of its kind which dealt with the use of opium for quasi-medical purposes. The reasons for this are not far to seek. When the United Nations Conference considering this Protocol adopted the principle that opium might be used only for medical and scientific purposes, it had also to deal with opium-smoking which was not a medical or scientific use of opium, and hence the transitional measures had been devised.⁵² Under the transitional measures, opium-smoking was to be abolished by a maximum period of fifteen years after the coming into force of this Protocol. The "use of opium for quasi-medical purposes" obviously included the eating of opium to cure diseases or to relieve pain- a very native "medical" practice- which was prevalent as a customary practice in certain countries, mainly those on the Asian, Middle Eastern and South American regions.^{52(a)} The provision of transitional measures in the Protocol⁵³ was an expression of the real understanding of a deep-seated problem on the part of the Contracting Parties. Yet the Protocol merely made provisions of control by the usual methods, e.g. control of production, submission of statistics and estimates to the

Permanent Central Board and failed to make any provision for the cure of the habit of opium-eating. This was left entirely to the Parties concerned.⁵⁴

This Protocol also followed the pattern of all narcotic and opium conventions concluded during the League period in so far as denunciations,⁵⁵ termination⁵⁶ and reservation⁵⁷ were concerned. A Party might denounce this Protocol after the expiration of five years from the date of its coming into force. The provision of "termination" was a necessary follow-up of the "denunciation" provision. Such provisions merely impede the creation of an international legal order.⁵⁸ That the nations were not willing to be so bound by an international obligation, in so far as this area of international law is concerned, can easily be established by the fact that this Protocol came into force about ten years after its adoption,⁵⁹ even though the ratification or accession of only twenty-five states, including three producing and three manufacturing states, was necessary.⁶⁰

CHAPTER VI

FOOTNOTES

1. U.N. Treaty Series, vol. 12, p. 179.
2. See also U.N. General Assembly 3rd Session, Plenary Meetings, Official Records, 1948, vol. 6, pp. 348 et. seq.,
3. Article VII.
4. See Preamble to the Protocol. U.N. Treaty Series, vol. 44, p. 277. This Protocol is also known as the Paris Protocol of 1948.
5. Article 4 of the Protocol.
6. See, in particular, U.N. Doc. A/C. 3/SR.88 2 October, 1948, Summary Records of the 88th Meeting, A/PV. 149, 8 October, 1948, verbatim record of the 150th Meeting.
7. It was at this time that Pethidine, which is a powerful synthetic analgesic, was manufactured.
8. Bulletin on Narcotics, vol. VIII, No. 1, January-March, 1956. See also the Memorandum of the Secretariat on the terms of reference of the Commission on Narcotic Drugs, III, 5, in Annex I of the Report of the Commission on Narcotic Drugs on its First Session, p. 30 (Economic and Social Council, Official Records, Second Year, Fourth Session, Supplement No. 1).
9. E/CN.7/80.
10. For the expert opinions of various representatives, see Report of the Commission on Narcotic Drugs on its Second Session, E/575, pp. 13-15. The motion to prepare a separate instrument had been proposed by the representative of China. U.N. Doc. E/CN.7/106, p. 12.
The reasons that the Commission did not favour the idea of amending the existing conventions were: (a) that amendment of a multilateral treaty would require the unanimous consent of all Parties to the original treaty, which might have proved difficult to achieve and (b) that an amendment of either of the conventions, i.e., the International Opium Convention of 1925 (which contained no provision for its amendment) and the Limitation Convention of 1931, would not have produced the desired result because of their inherent limitations in extending the required control measures to the increasing number of manufactured drugs.

11. E/575, p. 15.

12. e.g. (a) it preferred to use the term "drugs" instead of "narcotic drugs", in order to bring all addiction-producing drugs under the scope of this Protocol. See E/CN.7/106, pp. 16-17.

(b) it found it advisable that the decision as to whether a drug came under the control regime of Group I or II of Article 1 of the Limitation Convention should rest with the W.H.O. instead of the Commission;

(c) it also advocated that notifications of drugs by the Secretary-General should be transmitted simultaneously to the Commission and the World Health Organization. See further E/CN.7/106, pp. 42-45 and 89-90.

13. For the text of these observations, see U.N.Docs. E/798, pp. 7-18 and E/CN.7/115, Adds 1-2.

14. Article 2 of the Protocol; see also U.N.Doc. E/798, pp. 10, 12-13. Sweden urged that this power of the Commission should be recommendatory, and the Netherlands also seemed to prefer this idea, see E/1056.

15. E/SR.189, p. 14 (No. 159 I(VII) in the Council Series.

16. Bulletin on Narcotics, vol. VIII, No. 1, January-March, 1956, p. 9. See also E/CN.7/260, pp. 5-9 and 21-25.

17. E/OB-DSB/ W.66. pp. 3-4.

18. A/SR.150, pp. 1-26.

19. In fact, the Single Convention, as a measure of improvement of this situation, has taken this point into consideration, see below.

However, according to a U.N. Report, this unsatisfactory situation which had been left unremedied by this Protocol, had not been exploited by traffickers probably because governments and most drug manufacturers were aware of the problem and had a genuine desire to protect public health. Bulletin on Narcotics, vol. VIII, No. 1, January-March, 1956, p. 9.

20. Bulletin on Narcotics, op. cit., p. 8.

21. WHA.7.7. 17 May, 1954.

22. A/C.3/SR. 87, pp. 5-6.

23. Article 9.
24. U.N.Treaty Series, vol. 456, 1963.
25. Paragraph 1.
26. Paragraph 2.
27. For a detailed account of the work of the Conference, see U.N.Docs. E/CONF.14/6.2 dated 5 May, 1953, E/CONF.14/SR.2 dated 28 May, 1953, E/CONF.14/SR.3 dated 29 May, 1953, E/CONF.14/SR.5 dated 16 June, 1953, E/CONF.14/SR.8 dated 25 June, 1953, E/CONF.14/SR.10, dated 30 June, 1953 and E/CONF.14/SR.11 dated 1 July, 1953.
28. Article 4.
29. Article 5(3) (d).
30. Article 5(5) (b).
31. Article 5 (5) (a).
32. Article 18 of the International Opium Convention of 1925 : "If any Contracting Party finds it impossible to apply any provision of this Chapter to trade with another country by reason of the fact that such country is not a party to the present Convention, such Contracting Party will only be bound to apply the provisions of this Chapter so far as the circumstances permit".
33. Article 7(2).
34. This included the amount of opium delivered for retail trade, or to be dispensed or administered by hospitals or by qualified and duly authorized persons in the exercise of their professional or medical functions.
Article 8(1)(a) of the 1953 Protocol.
35. Article 8 of the International Opium Convention, 1925 : "In the event of the Health Committee of the League of Nations, after having submitted the question for advice and report to the Permanent Committee of the Office international d'Hygiene publique in Paris, finding that any preparation containing any of the narcotic drugs referred to in the present Chapter cannot give rise to the drug habit on account of the medicaments with which the said drugs are compounded and which in practice preclude the recovery of the said drugs, the Health Committee shall communicate this finding to the Council of the League of Nations. The Council will communicate the finding to the Contracting Parties, and thereupon the provisions of the present Convention will not be applicable to the preparation concerned".

36. Article 8 (11) (b)

37. Article 10.

38. Article 12.

39. Article 24 :

1. "The Central Board shall continuously watch the course of the international trade. If the information at its disposal leads the Board to conclude that excessive quantities of any substance covered by the present Convention are accumulating in any country, or that there is a danger of that country becoming a centre of the illicit traffic, the Board shall have the right to ask, through the Secretary-General of the League, for explanations from the country in question."
2. "If no explanation is given within a reasonable time or the explanation is unsatisfactory, the Central Board shall have the right to call the attention of the governments of all the Contracting Parties and of the Council of the League of Nations to the matter, and to recommend that no further exports of the substances covered by the present Convention or any of them shall be made to the country concerned until the Board reports that it is satisfied as to the situation in that country in regard to the said substances. The Board shall at the same time notify the government of the country concerned of the recommendation made by it."
3. "The country concerned shall be entitled to bring the matter before the Council of the League."
4. "The government of any exporting country which is not prepared to act on recommendation of the Central Board shall also be entitled to bring the matter before the Council of the League."
4. "The government of any exporting country which is not prepared to act on the recommendation of the Central Board shall also be entitled to bring the matter before the Council of the League.
If it does not do so, it shall immediately inform the Board that it is not prepared to act on the recommendation, explaining, if possible, why it is not prepared to do so."
5. "The Central Board shall have the right to publish a report on the matter and communicate it to the Council, which shall thereupon forward it to the governments of all the Contracting Parties."
6. "If in any case the decision of the Central Board is not unanimous, the views of the minority shall also be stated."
7. "Any country shall be invited to be represented at a meeting of the Central Board at which a question directly interesting it is considered."

40. Article 12(3)(c)(i).

41. The title of this chapter is "Enforcement Measures".

Article 20 of the Protocol: Title: Territorial Application

"This Protocol shall apply to all the non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any Party is responsible, except where the previous consent of a non-metropolitan territory is required by the Constitution of the Party or of the non-metropolitan territory, or required by custom. In such case the Party shall endeavour to secure the needed consent of the non-metropolitan territory within the shortest period possible and when that consent is obtained the Party shall notify the Secretary-General. This Protocol shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General. In those cases where the previous consent of the non-metropolitan territory is not required, the Party concerned shall, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which this Protocol applies".

42. Article 14: Measures of Implementation

"The Parties shall adopt all legislative and administrative measures necessary for the purpose of making fully effective the provisions of this Protocol".

43. Article 16: "This Protocol, of which the Chinese, English, French, Russian, and Spanish texts are equally authentic, shall until 31 December 1953 be open for signature on behalf of any Member of the United Nations and of any non-member State invited, in accordance with the instructions of the Council, to participate in the Conference which drew up this Protocol, and of any other State to which the Secretary-General at the request of the Council, has sent a copy of this Protocol".

Article 18: "This Protocol may be acceded to on behalf of any Member of the United Nations or any non-member State referred to in article 16 or any other non-member State to which the Secretary-General, at the request of the Council has sent a copy of this Protocol. The instruments of accession shall be deposited with the Secretary-General".

44. B.A. Renborg, "Analysis of the Preamble to the Protocol and of the Recommendations Embodied in the Final Act", Bulletin on Narcotics, July-September, 1953, p.31

45. Supra., pp. 267-269
46. See Article 6. Bulgaria, Greece, India, Iran, Turkey, Union of Soviet Socialist Republic and Yugoslavia.
At the time this Protocol came into force, Bulgaria was not a party to it.
47. Italics added.
48. Article 12(3) (c) (i) and (ii).
49. Article 14.
50. See the opinion of Renborg who was an observer from Sweden at the Conference adopting this Protocol. U.N.Doc. E/CONF.14/SR.19, p.15.
51. See also the opinion of the Dutch Delegate at the Conference. U.N.Doc. E/CONF.14/SR.4., p. 12.
52. See also B.A.Renborg, op.cit., Bulletin on Narcotics, July-September, 1953, at p. 36.
- 52(a) Supra., pp. 18-19
53. Article 19.
54. One of the problems that must have been encountered during the transitional period was how a licensed vendor would determine whether or not prospective buyer was buying opium for quasi-medical use.
55. Article 23.
56. Article 24.
57. Article 25.
58. Supra., pp. 374-376.
59. This Protocol came into force on 8 March, 1963.
60. Article 21.

Ratification by three of the following producing states was necessary:

Bulgaria, Greece, India, Iran, Turkey, Union of Soviet Socialist Republic and Yugoslavia.

Ratification by three of the following manufacturing states was necessary:

Belgium, France, Federal Republic of Germany, Italy, Japan, the Netherlands, Switzerland, United Kingdom of Great Britain and Northern Ireland and the United States of America.

CHAPTER VIIAN EXAMINATION OF THE SINGLE
CONVENTION ON NARCOTIC DRUGS,
1961¹(a) Introduction

The international control system, as appears from the foregoing discussion, had become complicated by the introduction of nine conventions, agreements and protocols. A single convention embracing all necessary and enforceable aspects of control, to replace the existing treaties was found essential with a view, inter alia, to simplifying the international control system.² By two resolutions³, the Economic and Social Council authorised the Commission on Narcotic Drugs to work on the codification of this Convention. With the co-operation of various governments, international and inter-governmental bodies the Commission prepared a draft convention, and a Plenipotentiary Conference for the Adoption of a Single Convention on Narcotic Drugs was convened at New York from January 24 to March 25, 1961. The Single Convention on Narcotic Drugs of 1961 was adopted and opened for signature by the Conference on March 30, 1961, and it came into force on December 13, 1964.

(b) Objectives of the Convention

The lacunae of the existing agreements and conventions on drugs offered an opportunity to the drafters of the Single Convention on Narcotic Drugs (hereinafter called the "Single Convention") to formulate its objectives. Some of these objectives, as it will appear, were new, while others were merely repetitive, or an extended version of the objectives of the previous drug conventions and protocols. These objectives which, although not comprehensive,⁴ embraced a considerable number of areas, namely:

- (a) codification of the existing multilateral conventions on drugs;
- (b) simplification of the international control machinery;
- (c) extension of the control system to the cultivation of other natural products in addition to opium and poppy straw which produce narcotic effects, e.g. cannabis, cannabis resin and coca leaves (except when such leaves are used for the purpose of flavouring beverages) ; and
- (d) adoption of appropriate measures for the treatment and rehabilitation of drug addicts.

(c) The Scope of Control

The scope of control of the Single Convention is much wider than that of any previous drug convention.⁵ The drafters of this Convention maintained a certain flexibility, which is essential in such matters, in order that the scope of control may be extended

or limited, as and when necessary, and in doing so they had the benefit of experience from the previous conventions. A change in the scope of control under the Single Convention meant bringing an uncontrolled substance into the control regime; changing the regime applicable to a drug, cancelling such a regime in respect of a preparation, and removing a drug completely from its control regime.⁶ The first drug-treaty which had a procedure for changing the scope of control, i.e., to place additional drugs under control, if necessary, was the 1925 Convention.⁷ By the 1946 Protocol the task of changing the scope of control was entrusted to the World Health Organization, but the opinion and action of this organization were only recommendatory, and therefore, binding only upon those states which expressly accepted them as "obligations". This Convention also authorised the World Health Organization to exempt certain preparations from the control regime if it found that the preparations could not "give rise to the drug habit". Unlike the 1925 Convention, any extension of the control regime under the 1931 Convention was automatically binding upon its Parties, and the authority for such a decision had been conferred upon the World Health Organization. In certain cases,⁸ the decision as to the "addiction-producing" capacity of a drug was taken by an ad hoc Expert Committee of the World Health Organization,

and such decisions were binding upon the Parties to the 1931 Convention. In addition to this, the 1931 Convention made provisions for provisional control, i.e., the extension of the control regime to a drug which was suspect, although a notification from a government, presumably endowed with a strong sense of co-operation, was necessary for making such a provision operative.⁹ The limitation in scope of the 1931 Convention¹⁰ led to the adoption of the 1948 Protocol, which extended the control regime to synthetically manufactured drugs. In order to make the control provisions of this Protocol effective in this regard, one of its Parties was required to notify the Secretary-General of the United Nations of the harmful effects which the drug concerned might produce. Although the final decision as to whether the control regime should be extended to such a drug lay with the World Health Organization, the Commission on Narcotic Drugs was empowered to take interim measures by putting the drug under provisional control.

Under the Single Convention, however, an attempt has been made to assimilate all the operative parts of the previous agreements and conventions, although in certain cases amendments to and extensions of provisions have been made, as and when necessary. Like the 1948 Protocol,¹¹ the

Single Convention also provided that in order to have any of the Schedules amended, it is necessary to ensure that such a drug is liable to the same kind of abuse and is productive of the same kind of harmful effects as the drugs already under control.¹²

As under the 1925 Convention and the 1948 Protocol, the Single Convention extends to a substance of any chemical structure.¹³ Like the 1925 Convention, the Single Convention has also provided that the initiative to amend any of the Schedules (i.e., by bringing the matter to the attention of the Secretary-General) may be taken either by a Party to it or by the World Health Organization.¹⁴ However, any initiative to amend a Schedule will obviously be directed to one of the following:

- (a) Bringing a substance under international control by placing it under Schedule I or II or by placing it simultaneously under Schedule I and IV, and consequently, making it subject to a much stricter regime of control;
- (b) Changing the regime applicable to a drug ; i.e., by transferring it from Schedule I to Schedule II or vice versa; or by simultaneously placing a drug in Schedule IV which is already in Schedule I;
- (c) Bringing a preparation under Schedule III or cancelling such a preparation from Schedule II; and

- (d) Freeing a drug completely from the control regime by deleting it from Schedule I and/ or IV or II.¹⁵

The responsibility of making a final decision in this matter lies with the Commission and such decision "shall become effective with respect to each Party on the date of its receipt of such communication, and the Parties shall thereupon take such action as may be required under this Convention".¹⁶ All decisions of the Commission are, in practice, based upon the recommendation of the World Health Organization and during the pendency of a recommendation by the said organization, the Commission on Narcotic Drugs may direct the Parties to apply provisionally to that substance all measures of control applicable to drugs in Schedule I, and the Parties shall apply such measures provisionally to the substance in question.¹⁷

Such decisions of the Commission shall not be subject to the review procedure provided for in Article 7 of this Convention.¹⁸

However, not all newly produced or manufactured drugs need to be placed under the international control regime.

In other words, the question of placing a drug under the international control regime will only be considered if the initiative to this effect is taken either by a Party to the Single Convention or by the World Health Organization.

Paragraph I of Article 3 has excluded non-parties to the

Convention in this matter, and indeed, the whole machinery of the transmission of information and notifications concerning amendment to any of the Schedules been confined to the Parties to the Convention and the World Health Organization.¹⁹

However, under the Single Convention, the Scope of control in respect of a substance has two aspects, viz. (a) Provisional and (b) Mandatory. When a notification relates to a substance not already in Schedule I or in Schedule II, "the Parties", in terms of paragraph (i) of Article 3, "shall examine in the light of the available information the possibility of the provisional application to the substance of all measures of control applicable to drugs in Schedule I". Therefore, under this paragraph, it is left to the judgement of a Party whether or not there is a possibility of applying the provisional control measures to a drug. The mandatory aspect is the graduated version of the provisional aspect, i.e, it comes into play when the provisional measures of control have received confirmation as to their compulsory application in the future. Mandatory measures are, therefore, preceded by provisional measures.²⁰ The merits of such provisional measures can hardly be over-emphasised, and the machinery of control may be put into operation on the basis of information

received not only from the Secretary-General of the United Nations but also from the World Health Organization, the Secretariat, governments and even from the observers who participate at various levels in the control measures adopted by the Commission on Narcotic Drugs.

The mandatory measures of control consist of two stages: firstly, it is for the World Health Organization to find that the "substance is liable to similar abuse and productive of similar ill effects as the drugs in Schedule I or Schedule II or is convertible into such a drug, and secondly, in the event of its finding it the affirmative, it shall communicate accordingly to the Commission on Narcotic Drugs, upon which the Commission may decide that "the substance shall be added to Schedule I or Schedule II". Although the technical work of the first stage was be discharged by the World Health Organization alone, the Office of the Legal Affairs of the United Nations, at one stage of the drafting of the Single Convention, pointed out to the Commission on Narcotic Drugs the anomaly which persisted over the expression "the substance is liable to similar abuse and productive of similar ill effects as the drugs in Schedule I or Schedule II...", and which, in effect imposed a restriction upon the discretion of the World Health Organization. The term "similar" embraces a wide area of comparis

As barbiturates, tranquillizers and amphetamines were outside the scope of the Single Convention, presumably on the presumption that they were neither liable to "similar" abuse nor could they produce "similar" ill effects as the drugs in Schedule I or Schedule II, it was pointed out by the Legal Office that the "effects of amphetamines have some degree of similarity to cocaine, and those of barbiturates and tranquillizers to morphine", and this found some degree of support from the Commission.²¹ The net result has been that the drugs which are likely to produce ill effects or are liable to abuse have been made subject to a more severe test in order to ascertain whether or not they should come under the international control regime. As the control regime is under constant examination, and as the character of the Schedules may be changed and/or amended by inclusion or exclusion of drugs, it may be observed that the scope of control under this Convention is flexible, and hence may be adjusted as the circumstances require. Unlike the Limitation Convention,²² the Single Convention does not justify the "convertibility" of a substance by reference to its chemical formula; in other words, it does not require that the substance concerned has a particular chemical formula.²³ The "convertibility" on a substance is determined in accordance with its properties, rather than its chemical formula. This wider interpretation of the "convertibility" of substances has a deterrent effect upon the illicit traffickers in that their attempts to transform a substance into one which falls under the category of controlled dangerous drugs will meet with failure.²⁴

Article 3, paragraph 4 has made provisions for the exemption of preparations from certain measures of control, according to which, if the World Health Organization finds that a preparation is not liable to abuse nor can produce ill effects and that the drug therein is not readily available, the Commission may add that preparation to Schedule III. "Exemption", in this context, means exemption from the regime of Schedule I and Schedule II. It may, however, be observed that the Commission is not bound by the recommendations of the World Health Organization in this matter; and indeed, the provision, that "the Commission may, in accordance with the recommendation of the World Health Organization, add that preparation to Schedule III", authorises it even to refuse to accept the recommendations of the World Health Organization. Again, the expression "that the drug therein is not readily²⁵ available", amounts to an escape clause, because what is not "readily" recoverable, may be recoverable in the course of time, especially in an age when the progress of chemistry is unbounded. Incidentally, that the provisions of Article 3, paragraph 4 might not help produce the desired result of this Convention, has been made explicit in Article 39 which states, inter alia, "Notwithstanding anything contained in this Convention, a Party shall not be, or deemed to be, precluded from adopting measures of control more strict or severe than those provided by this Convention and in particular from requiring that preparations in Schedule III or drugs in Schedule II be subject to all or such of the measures of control applicable to drugs in Schedule I ...". However, in all fairness it should be stated

that the area of exemptions under Schedule III of the Single Convention²⁶ is much narrower than that of the corresponding provisions of the previous narcotic drug agreements and conventions.

The Single Convention has devised a new Schedule, namely, Schedule IV, and the substances in it are those:

- " (a) Having strong addiction-producing properties or a liability to abuse not offset by therapeutic advantages which cannot be afforded by some other drug; and/or
- (b) For which deletion from general medical practice is desirable because of the risk to public health." ²⁷

Article 3, paragraph 5, if read with the above classification, makes it clear that drugs in Schedule IV shall also be included in Schedule I. The question arises whether a drug included in Schedule I should simultaneously be included in Schedule IV also, and if so, on whose recommendation. Although in Article 3, the discretion of the Commission as to whether or not to accept a recommendation of the World Health Organization has been maintained, the use of the word "may" gives in practice much importance to the recommendation of the World Health Organization. It also appears to be appropriate that a drug included in Schedule I should be simultaneously placed under Schedule IV, and that also at the recommendation of the World Health Organization. This procedure seems to be more appropriate in view of the nature of substances that fall under Schedule IV.²⁸ Incidentally, the standards set out by the Technical

Committee of the Plenipotentiary Conference are similar to those set out in Article 3, paragraph 5,²⁹ and both the World Health Organization and the Commission on Narcotic Drugs considering the grouping of a substance, are generally guided by social and public health motives.

Article 3, paragraph 6 has given the Commission on Narcotic Drugs a wide power to amend any of the Schedules by:

- " (a) Transferring a drug from Schedule I to Schedule II or from Schedule II to Schedule I ; or
- (b) Deleting a drug or a preparation as the case may be, from a Schedule."

However, this the Commission may do " in accordance with the recommendation of the World Health Organization." ³⁰ This provision does not, however, apply to measures provided for in paragraph 5 of this Article. It may be observed in this connection that in the event of the transfer of a drug from Schedule I to Schedule II, it should also be deleted from Schedule IV; similarly, the transfer of a drug from Schedule II to Schedule I will generally involve inclusion of the same drug in Schedule IV. Again, if a drug listed in Schedule I or Schedule II is deleted, its preparation will automatically be deleted from Schedule III, assuming, of course, that the preparation's having passed all tests has established that it would not constitute a risk to public health, if de-controlled.

The scope of control under the Single Convention extends to the cultivation of opium poppy, coca bush, cannabis plant³¹ and poppy straw,³² and the responsibility for effecting the control regime

in this regard rests upon the Contracting Parties. By Article 22, the Parties have obligated themselves to prohibit the cultivation of the opium poppy, the coca bush or the cannabis plant whenever the prevailing conditions in their countries or territories concerned render the prohibition of their cultivation the most suitable measure, in their opinion, for protecting the public health and welfare and preventing the diversion of drugs into illicit traffic. The success of such measures entirely depends upon the co-operation of the Parties concerned. In practical terms, in the absence of an effective enforcement measures, prohibition of the cultivation of such plants may not be possible.

For Article 22 to be meaningful, seeds and straw of poppies should also be included in the international control regime, and indeed, Article 25 of the Convention has specifically provided for the control of poppy straw and opium poppy. The Parties shall also apply to poppy straw the system of import certificates and export authorizations,³³ and they are also required to furnish statistical information on the import and export of poppy straw.³⁴ One of the compelling reasons for the inclusion of the opium poppy in the control regime is that it is cultivated not only for straw but also for opium or its seeds or both. Poppy straw is not longer a waste product, and is usually sold by cultivators for the manufacture of morphine.

The Single Convention has not only extended its scope of control to coca bush and coca leaves,³⁵ but also made additional provisions for control relating to coca leaves.³⁶ Both Articles

26 and 27 permit a Party to cultivate the aforesaid items, but in restricted manner. The production of coca leaves shall be limited only to medical and scientific purposes. The Convention also requires the Parties to enforce the uprooting of all coca bush growing wild, and to destroy it, if illegally cultivated.³⁷ Both coca leaves and coca bush will have to be made over to the National Opium Agencies in accordance with Article 23. The Single Convention is the first multi-lateral convention to make prohibitory provisions concerning the cultivation of the coca bush. Coca leaf has been listed as a "drug" in Schedule I of the Convention, and therefore, Article 27 permits a Contracting Party to use coca leaf for the preparation of a flavouring agent which does not contain any alkaloids. In other words, if they retain any amount of their alkaloids, they should be described as "coca leaves", and therefore be subject to the regime of control applicable to drugs in Schedule I. Indeed, the Parties are required to furnish separately estimates and statistical information in respect of coca leaves for preparation of the flavouring agent, except to the extent that the same coca leaves are used for the extraction of alkaloids and for the flavouring agent, and this is so explained in the estimates and statistical information.³⁸

Cannabis and Cannabis resin have also been made subject to the same regime of control that is applicable to opium.³⁹ Save the temporary exception allowed under Article 49, cannabis and cannabis resin shall not be produced for purposes other than medical and scientific. The control regime shall not, however, apply, if cannabis is cultivated for industrial (fibre and seed) or horticultural purposes.

In discussing the scope of control under the Single Convention, it is necessary to mention, in brief, the nature of the substances which have been brought under the control regime of this Convention. All drugs, their preparations and narcotic substances, which are already in existence have, under the Single Convention, been included in four Schedules. The substances which have been included in these Schedules are shown below:

40

Schedule I: the substances which have been included in this

Schedule are those:

- "(a) Having addiction-producing or addiction-sustaining properties greater than those of codeine and more or less comparable to those of morphine;
- (b) Convertible into substances having addiction producing or addiction-sustaining properties with an ease or yield such as to constitute a risk of abuse greater than codeine; or
- (c) Having a liability to abuse comparable to that of cannabis, cannabis resin or cocaine; or
- (d) Convertible into substances having a liability to abuse comparable to that of cannabis, cannabis resin or cocaine."

⁴¹
Schedule II : The substances which have been included in this Schedule are those:

- "(a) Having addiction-producing or addiction-sustaining properties not greater than those of codeine but at least as great as those of dextropropoxyphene; or
- (b) Convertible into a substance having addiction-producing or addiction-sustaining properties with an ease and yield such as to constitute a risk of abuse not greater than that of codeine."

⁴²
Schedule III: This Schedule contains those preparations which:

- " (a) Are intended for legitimate medical use; and
- (b) Have a specified drug content and are compounded with one or more ingredients in such a way that the preparation has no, or a negligible risk of abuse, and in such a way that the drug cannot be recovered by readily applicable means or in yield which would constitute an risk to public health."

⁴³
Schedule IV : The substances which have been included in this Schedule are those:

- "(a) Having strong addiction-producing properties or a liability to abuse not offset by therapeutic advantages which cannot be afforded by some other drug; and/or
- (b) For which deletion from general medical practice is desirable because of the risk to public health."

The guiding principle behind the narcotic regime of the Single Convention is to limit the use of narcotic drugs and/or narcotic substances to medical and scientific purposes at all stages, e.g. manufacture, trade (wholesale and retail), possession etc. In preparing the Schedules of drugs, the Technical Committee of the Plenipotentiary Conference applied two criteria, viz.

- (a) the " degree of liability to abuse" of the substance, and
- (b) the "risk to public health and social welfare" which the substance in question poses or might pose.

Upon a further analysis, it may be stated that the substances which have been taken into account in preparing Schedules I and II are, morphine, codeine, cannabis, cannabis resin, cocaine dextropropoxyphene.⁴⁴ The Single Convention, however, does not indicate what it considers to a significant " degree" of liability to abuse and of " risk to public health and social welfare" . It is presumed that such a lapse has been maintained deliberately with a

view to adopting a flexible policy according to the demands of the circumstances. In fact, the World Health Organization has been allowed a considerable amount of discretion in interpreting the above two criteria.

The Single Convention uses the term "drug" to mean any of the substances in Schedules I and II, whether natural or synthetic,⁴⁵ and indeed, in this thesis the term "narcotic drug" has been used synonymously with the term "drug", unless otherwise specified. The idea is to eliminate the distinction between these two terms, from the point of view of their abuse, as far as possible. Drugs in Schedule IV must also be in Schedule I, and a Party shall "adopt any special measures of control which in its opinion are necessary having regard to the particularly dangerous properties of a drug so included",⁴⁶ and shall, "if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import or, trade in, possession or use of any such drug except for amounts which may be necessary for medical and scientific research only, including clinical trials therewith to be conducted under or subject to the direct supervision and control of the Party."⁴⁷ The opium poppy, the coca bush, the cannabis plant, poppy straw and cannabis leaves are subject to some special measures of control.⁴⁸ The provisions of Articles 2 and 3 of the Convention are by no means exhaustive, but covering provisions may be found in the other parts of the Convention.⁴⁹

Although Schedule II corresponds to Group II of the Limitation Convention, trade in Group II did not have to be validated by a licence, nor did they require any medical prescription for their supply. The Single Convention has placed the drugs in Schedule II

under a stricter regime than the previous narcotic treaties in that these drugs are subject to the same regime of control as drugs in Schedule I.⁵⁰ Trade in such drugs is permissible only under a licence, except where trade or distribution is carried out by a government enterprise.⁵¹ It is also obligatory for the Parties to furnish quarterly statistics concerning imports and exports of these drugs.⁵² Drugs in Schedule II are subject to the same control as drugs in Schedule I, with the exception of the measures prescribed in Article 30, paragraphs 2 and 5,⁵³ but they are not excepted from the application of Article 34 (b).

The Single Convention has devised a stricter regime of control for the preparations in Schedule III, than that applied to "preparations for the export of which authorizations are not required" under the earlier treaties.⁵⁴ Preparations in Schedule III are, save for the proviso at paragraph 4 of Article 2, as amended by the 1972 Protocol,⁵⁵ subject to the same control regime between Schedules II and III, the preparations in Schedule III are subject to the following measures, which are also applicable to substances in Schedule II.

- (a) licensing of manufacture and trade except when carried out by a state enterprise;⁵⁶
- (b) control under licence in establishments and premises in which such manufacture may take place;⁵⁷
- (c) control of all persons and enterprises carrying on or engaged in the manufacture, trade or distribution of drugs, import or export of drugs;⁵⁸

(d) limitation of drugs exclusively to medical and scientific purposes in production, manufacture, export, import, distribution of, trade in, use and possession of drugs, and also the rules concerning package or wrappers;⁵⁹ and

(e) keeping of records concerning the manufacture and sale of drugs by manufacturers, traders etc.⁶⁰

The Commission may, in accordance with the recommendation of the World Health Organization place a substance under Schedule IV, if the latter organisation finds that " a drug in Schedule I is particularly liable to abuse and to produce ill effects (Article 3, paragraph 3) and that such liability is not offset by substantial therapeutic advantages not possessed by substances other than drugs in Schedule IV." ⁶¹ The drugs in Schedule IV shall also be included in Schedule I and be subject to all measures of control applicable to drugs in the latter Schedule, in addition to certain special measures to be adopted by Parties, as have been indicated in Article 2, paragraph 5.⁶² It appears that the question of including a drug in Schedule IV is to be initiated by the World Health Organization, although the final authority in this matter rests upon the Commission on Narcotic Drugs. In considering the suitability of placing a drug under Schedule IV, the World Health Organization will take the following points into account:

(a) that " a drug in Schedule I is particularly liable to abuse and to produce ill effects"; and

(b) that " such liability is not offset by substantial therapeutic advantages not possessed by substances other than drugs in Schedule IV."

Schedules I and IV are interwoven. Also, the second point (b) is closely related to Article 2, paragraph 5(b), i.e., protection of public health and welfare would be the guiding principle in putting a drug under the control regime envisaged in Schedule IV. However, the dangerous properties which will warrant the inclusion of a drug by the application of paragraph 5 are of the same character as those defined in paragraph 3(iii). " The difference between the harmful effects required by paragraph 5 and those defined in paragraph 3, sub-paragraph (iii) is one of degree and not of kind." ⁶³ The findings of the World Health Organization in this matter may or may not be accepted by the Commission on Narcotic Drugs. Indeed, while the Commission may accept the recommendations of the World Health Organization to include a drug in Schedule I, it can refuse to include the same substance in Schedule IV. Where, however, the Commission decides to place a drug in Schedule IV, its decision to do so must be preceded by a recommendation of the World Health Organization.

Comments

The Single Convention, as explained above, has made attempts to extend the scope of the international control of narcotic drugs by various means. In so far as the provisions under Article 3 are concerned, the Convention has accorded the Commission on Narcotic

Drugs authority over the World Health Organization. In other words, the expert opinion of the World Health Organization on the medical aspects of drugs, which previously ⁶⁴ was binding, not only upon the Commission, but also upon the Parties to the drug conventions prior to the Single Convention, has now lost its force, although the Commission, in taking any measure of control, still takes the recommendations of the World Health Organization into account. The Commission can even reject a recommendation made by the World Health Organization.⁶⁵

One of the gaps which persists in Article 3 is that it has made no provision for accepting from a non-party to the Convention any notification concerning amendment to any of the Schedules. It may be observed that if a specific provision to this effect had been made, it would perhaps have been possible or easier from the psychological point of view, to impose some of the directives of the Commission upon the non-parties to this Convention, among whom illicit traffic usually thrives.

Equally, the scope of control in respect of cannabis, poppy straw etc. has been confined to the Parties to the Convention. In many cases, the judgment as to whether or not a particular kind of plant should be cultivated has been left entirely to the Parties concerned.⁶⁶ However, one of the notable characteristics of the "scope of control" as designed by the Single Convention is its flexibility and potentiality to cover a wider area of the drug-world. Also, this Convention, in devising its control regime, has indirectly made provisions so as to make the Parties more responsible in their behaviour as far as this area of international law is concerned.

(d) General Obligations

The Single Convention has, in Article 4, formulated certain general obligations for the Contracting Parties. This means that the Contracting Parties have undertaken a double pledge, viz.

(a) the usual pledge of pacta sunt servanda and (b) some additional pledges in the form of obligations, the two parts being complementary. However, the Parties have undertaken to "take such legislative and administrative measures as may be necessary:

- (a) To give effect to and carry out the provisions of this Convention within their own territories;
- (b) To co-operate with other States in the execution of the provisions of this Convention; and
- (c) Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import distribution of , trade in, use and possession of drugs."

The term "territory" has been used in the Single Convention in two different senses: ⁶⁷ (a) to mean any part of a State which is treated as a separate entity for the application of the system of import certificates and export authorizations provided for in Article 31⁶⁸ and (b) in the sense other than it is used in Articles 42⁶⁹ and 46⁷⁰. Therefore , while "territory" in the former case stands for an "administrative" or "functional"

area, in the latter it stands for a "political" area.⁷¹

In applying the provisions of the Single Convention, these different meanings of "territory" should be maintained as they have a further bearing upon the effective implementation of the treaty provisions in their respective administrative limits. It is for this reason that the Contracting Parties are required to inform the Secretary-General of the United Nations as soon as possible of any changes in their administrative limits. For a fuller meaning of "territory" under the Single Convention, certain other provisions, namely those concerning estimates of drug requirements (Article 19 of the Single Convention and Article 9 of the 1972 Protocol), statistical returns (Article 20 of the Single Convention and Article 10 of the 1972 Protocol), limitation of manufacture and importation (Article 21 of the Single Convention and Article 21 bis of the 1972 Protocol), special provisions applicable to cultivation (Article 22 of the Single Convention and Article 12 of the 1972 Protocol), designation of areas of cultivation of poppy straw (Article 25- Single Convention), coca bush and coca leaves (Article 26- Single Convention), preparation of flavouring agent from such leaves (Article 27- Single Convention) and control of cannabis (Article 28 - Single Convention) should also be taken into account.

On the other hand, in order to implement the United Nations directives on the control measures, a determinate territory over which effective administrative control is exercised will, no doubt, be necessary. In addition to the legislative authority of the Parties over their respective territories, they are also required to exercise effective administrative authority, especially in view of the obligations undertaken by them in Article 17 concerning special administration for the purpose of applying the provisions of this Convention. Yet, in Article 35, the Parties have undertaken to take action against the illicit traffic in narcotic drugs having due regard to "their constitutional, legal and administrative systems".⁷²

The Convention has rightly emphasised the importance of the Contracting Parties' adoption of such legislative and administrative measures, as may be necessary, to co-operate with other states in the execution of its provisions.

The necessity of such co-operation has been re-iterated especially in Articles 35 and 36 (2)(b),⁷³ in addition to the recognition given to it by the Contracting Parties in the Preamble to the Convention.

The term "co-operation", it is observed, should be interpreted and observed in its legal sense, i.e., a contractual obligation. Otherwise, the ordinary meaning

of the word, "working together to the same end" or "concur in producing an effect",⁷⁴ will be more honoured in the breach than in the observance. It is in this sense of the word that "co-operation" in the convention will be meaningful. Indeed, the co-operation which is needed, especially in the case of punishment of illicit traffickers, or prevention from use of a territory for the purposes of illicit traffic etc., even if it means enacting new laws and/or setting up new administrative procedures, should not only be viewed seriously, but also taken as a legal duty, for a breach of which the Contracting Party concerned can be taken to task.

In Article 4(c) the Contracting Parties have undertaken the usual obligations to take such legislative and administrative measures as may be necessary, "subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs". The Hague Opium Convention of 1912, the International Opium Convention of 1925 and the 1953 Protocol contained a very similar provision.⁷⁵

The difficulties in defining the scope of the expression "medical and scientific purposes" are many.⁷⁶ There must

also be taken into consideration the sociological and religious importance attached to certain drugs in certain parts of the world. The term "medical purposes" includes the use of authorised drugs for veterinary and dental purposes.⁷⁷

The expression "medical and scientific purposes" will have different meanings at different times. However, it is an encouraging sign that the Single Convention has made attempts to widen the area of its application. The areas of exemption have been embodied in Articles 2(9), 27 and 49.⁷⁸ That the provisions of Article 2(9) are of no immediate practical importance has been best summarised by Mr. A. Lande, Deputy Executive Secretary of the U.N. Secretariat at the Conference when he stated that "the paragraph was of no immediate practical importance, but had been inserted to anticipate possible future developments. In the past, certain chemicals used in manufacturing dyes had been found to have important medical properties. In the same way, some substance commonly used in industry might be found at some time in the future to have addiction-producing properties and thus fall within the scope of the Convention". He further added that this paragraph "had been included to reconcile the wide use of a substance in industry with obligations to control the substance under the Convention".⁷⁹ Although certain chemicals which are used in industry for non-medical and non-scientific purposes are thought to have contained some medical properties,⁸⁰

it is thought to be very difficult to restore the dangerous properties of those drugs which remain unused in the industrial process. To prevent any illicit use of those properties, if any, the co-operation of governments by way of enacting new laws, an regulations under/or implementing administrative measures should impede any development in this direction.

Article 27 envisages the inapplicability of the control regime of the Single Convention in respect of coca leaves when such leaves are used for the preparation of a flavouring agent, and do not contain alkaloids, and "to the extent necessary for such use", the Parties may permit the production, import, export, trade in and possession of such leaves". Apparently, if all the alkaloids have been removed from coca leaves, they cease to be coca leaves,⁸¹ and hence, the application of the control regime under the Single Convention seems to be pointless. Yet, an abuse of this privilege may not be ruled out and in fact, as the precise quantity ~~sh~~^{ould} be used for the preparation of a flavouring agent is difficult to ascertain beforehand, such a privilege might well be exploited. However, a stringent national policy for the

prevention of such abuse may be the only remedy.

The reservations under Article 49 are transitional, and they may be shorter periods than those provided for in the Article.⁸² Yet, it appears that by an application of Article 50, paragraph 3, such reservations can take a different character, e.g. the periods of reservations may be longer than those provided in Article 49.⁸³ It may, however, be observed that the obligations undertaken by the parties in Article 4 (c), "to limit exclusively to medical and scientific purposes production, manufacture, export, import, distribution of, trade⁸⁴ in, use and possession of drugs"⁸⁵ will equally apply to Article 49. In addition to this provision, in the event of their making reservations, the Parties required to observe the control measures as enunciated in Articles 23, 24, 26, 28(1), 29, 30 (except paragraph 2(b)), 31, 33 , 34 , 35, and 36, provided of course no exemption has been allowed under Article 50(3). The expression "possession of drugs" in Article 4(c) stands for possession both for personal consumption and illegal distribution of drugs, as well as authorised possession. In so far as the former situation is concerned, it is for the Parties to take appropriate measures by means legislation and/or administrative methods. Appropriate measures

in this context, will also include the punishment of offenders, and the confiscation of drugs illegally possessed. Drugs in Schedule II (including their preparations) as well as the preparations in Schedule III are not, however, outside the scope of Article 4, paragraph (c).

(c) Comments

A special article in a treaty enunciating certain "general obligations" appears to be unusual and redundant. Like a contract, a treaty also implies that the Contracting Parties have undertaken the obligations enumerated in that treaty. Moreover, a treaty should be interpreted as a whole, and therefore, the obligations, whether general or special by nature, may easily be ascertained. Perhaps, owing to the not-so-successful accomplishment of the previous drug-conventions, the authors of the Single Convention wished to emphasise in a novel way the obligations. It is from this point of view that the "general obligations" in the Single Convention may be taken as "special obligations". Yet, however rigorous the obligations in a treaty are, their effective performance depends entirely upon the co-operation of Contracting Parties. Such obligations are real when they have been undertaken in good faith; in its absence all obligations will result in a pseudo-undertaking.

On the other hand, in certain cases, treaty obligations, however honestly they have been undertaken, may not be performed owing to the inherent inability of the parties concerned. Such inability may relate to inadequate legislative and/or administrative machinery in the countries of the Contracting Parties or in certain other cases, even a dearth of qualified personnel to discharge these obligations satisfactorily. Nowhere in the Single Convention has been mentioned the necessity of having trained personnel in the countries of the Contracting Parties to ensure the proper implementation of the treaty provisions. Incidentally, the lack of adequate personnel, including the police force, may be partially responsible for the unsatisfactory results produced by the previous drug conventions.⁸⁶ Fortunately, some of the Contracting Parties are taking advantage of the training given at the U.N. laboratory, the World Health Organization and the International Criminal Police Organization.⁸⁷ Although the provisions of Article 4 appear to be unnecessary, they may be interpreted as a constant reminder to the Contracting Parties, and also as a "covering clause" in order to prevent them from finding a plea of breach of obligations.

CHAPTER VII

FOOTNOTES

1. 520 U.N.Treaty Series, p. 151.
2. As one single Convention has been concluded replacing the existing nine treaties, it is called a Single Convention on Narcotic Drugs. See also R. Gregg, "The Single Convention", 16 Food, Drug and Cosmetic Law Journal, 1961, p. 187; L. Goodrich, "New Trends in Narcotics Control", 530 International Conciliation, 1960, and A. Lande, "The Single Convention on Narcotic Drugs, 1961", 16 International Organization, 1962, p. 776.
3. 159 IID(VII) and 246D (IX).
4. It may be observed that such a lack of comprehensiveness in the objectives of the Single Convention played a great role in the conclusion of the Convention on Psychotropic Substances.
5. See also Article 9 and Article 21 bis of the 1972 Protocol.
6. *infra.*, pp. 144-162.
7. Both the Limitation Convention and the 1948 Protocol had provisions to this effect.
8. If the World Health Organization found that a preparation was not "addiction producing", but was convertible into an "addiction producing" drug, the decision as to whether the regime for a drug in Group I or Group II would be applied, was taken by an ad hoc expert committee.
9. Under Articles 8 and 10 of the International Opium Convention of 1925, this procedure could be initiated by the World Health Organization (by the Health Committee of the League of Nations prior to the 1946 Protocol). However, under the 1948 Protocol the World Health Organization could not act without a notification by a Party. According to Article 3(1) of the Single Convention, "where a Party or the World Health Organization has information which in its opinion may require amendment to any of the Schedules, it shall notify the Secretary-General and furnish him with the information in support of the notification."
10. The application of Article 11 of the Limitation Convention did not extend to drugs which could be produced from phenanthrene alkaloids of opium or ecgonine alkaloids of coca leaf.

11. See Article 1, paragraph 1 of the 1948 Protocol.
12. Article 3 of the Single Convention.
13. The scope of the Limitation Convention of 1931 was not extended to this extent.
14. Under the 1931 Convention, such initiative could be taken only by the Parties to the Convention;
15. See also Commentary on the Single Convention on Narcotic Drugs, 1961, op. cit., p. 80.
16. Paragraph 7 of Article 3.
17. Article 3(3)(ii). The 1948 Protocol contained the same provision (Article 2). The 1925 Convention did not provide for any provisional measures, but the 1931 Convention designated certain drugs to which such provisional measures automatically applied, see Article 11, paragraph 1.
 It may be appropriate to mention in this connection that if any recommendation as to amendment to any of the Schedules is made by the World Health Organization, at a time when the Commission on Narcotic Drugs is not in session or will not within a period of three months be in session, a decision in connection with that substance should be taken by the Commission before its next session; see Resolution I(XX) of the Commission on Narcotic Drugs, Report on the Twentieth Session. Official Records of the Economic and Social Council, Fortieth Session, Supplement No. 2, paragraphs 60 and 61.
 In such a situation, the Commission may wish to take a decision by postal or telegraphic vote (see paragraph 2 of the Resolution); or may defer the decision until a full discussion on the matter has been held at its next session. Presumably, a decision by postal or telegraphic vote may be made only in respect of non-controversial matters.
18. Article 7 reads as follows: "Except for decisions under Article 3, each decision or recommendation adopted by the Commission pursuant to the provisions of this Convention shall be subject to approval or modification by the Council or the General Assembly in the same way as other decisions or recommendations of the Commission".
19. See Article 3(2).
20. A similar provision had been made in Article 2 of the 1948 Protocol.

21. The Commission on Narcotic Drugs, Report on the twenty-third session, Official Records of the Economic and Social Council, forty-sixth session, paras 351-357.
The Permanent Board and the Drug Supervisory Body also, in their final report, gave a similar opinion, see E/CN.7/L.306 and E/OB/23- E/DSB/25 Paras 131-142. See also Commentary on the Single Convention on Narcotic Drugs, 1961, p. 87.
22. In terms of Article 11 of the 1931 Convention, a convertible substance when could be placed under international regime had to be a product "obtained from any of the phenanthrene alkaloids of opium or from the ecgonine alkaloids of the coca leaf".
23. The 1948 Protocol also recommended the same procedure.
24. The terms "conversion" and "convertibility" have often been used in different senses. While "conversion" stands for a "process", "convertibility" pre-supposes a transformation of a product into a completely product, i.e., it loses its original identity, and cannot be converted again to its original description or identity.
25. Italics added.
26. The substances in Schedule III of the Single Convention include the preparations which:
" (a) Are intended for legitimate medical use; and
(b) Have a specified drug content and are compounded with one or more other ingredients in such a way that the preparation has no, or a negligible, risk of abuse, and in such a way that the drug cannot be recovered by readily applicable means or in yield which would constitute a risk to public health".
U.N. Conference for the Adoption of a Single Convention on Narcotic Drugs, op. cit., vol. II, p. 264.
27. This standard had been set out by the Technical Committee of the Plenipotentiary Conference for the Adoption of a Single Convention, op.cit. vol..II, p 264.
28. The Commission seems to be in agreement with this procedure, see Official Records of the Economic and Social Council, Forty-second Session, Supplement No. 2, paragraphs 61-64.
29. Although paragraph 5 of Article 3 does not refer to the provisions as at clause (b) of the criteria set out by the Technical Committee of the Plenipotentiary Conference, i.e., "For which deletion from general medical practice is desirable because of the risk to public health", it may be mentioned that

the cases covered by clause (b) will generally fall under clause (a) ("Having strong addiction-producing properties or a liability to abuse not offset by therapeutic advantages which cannot be afforded by some other drug"), and hence covered by paragraph 5, especially because in the consideration of the ill effects of a substance, whether by the World Health Organization or by the Commission on Narcotic Drugs; "the risk to public health" is always taken into account.

30. Article 3(6).

31. Articles 22, (Article 12 of the 1972 Protocol), 26, 27 and 28.

32. Article 25, The Single Convention has not described the above things as "raw materials" since with "the progress in synthetic chemistry and the development of "synthetic" narcotics, the raw materials, which are at present used for the manufacture of drugs include substances which are commonly used in chemical synthesis, and which are not dangerous substances whose abuse the international narcotics regime is intended to combat". See the Commentary on the Single Convention on Narcotic Drugs, 1961, op. cit, P 304.

33. Article 25(2).

34. Article 25(3).

35. Article 26(3).

36. Article 27.

37. Article 26(2).

38. Article 27(2).

39. Article 28 and Article 12 from 1972 Protocol, amending Article 22 of the Single Convention.

40. Schedule I of this Convention corresponds to Group I of the Limitation Convention of 1931 (Article 1, paragraph 2, Article 11, paragraphs 3, 4 and 6, Article 13, paragraph 1 and Article 18) and the 1948 Protocol (Article 1, paragraph 2 and Article 2). Drugs under Group I of the 1931 Convention were divided into two sub-groups, viz. (a) and (b). Sub-group (a) included those drugs which were considered to be "capable of producing addiction" while sub-group (c) included those drugs which were not capable of producing addiction, but were convertible into such addictive drugs as were not much in use in medical practice. Drugs under the latter category mostly came under Group II. In the 1948 Protocol, no distinction had been made between sub-groups (a) and (b) of Group I.

41. Schedule II corresponds to Group II of the Limitation Convention, 1931 (Article 1, paragraph 2, Article 11, paragraphs 3, 4 and 6 and Article 13, paragraph 2) and the 1948 Protocol (Article 1, paragraph 2). Group II of the Limitation Convention included those drugs which were considered not to be capable by themselves of producing "addiction", but were convertible into such drugs as were in wide use in medicine.
42. Preparations in Schedule III correspond to "preparations for the export of which export authorizations are not required" in the 1931 Convention. (Article 5, paragraph 2, sub-paragraph (a), Article 6, paragraph 1, sub-paragraph (a), Article 13, paragraph 13, paragraph 2, sub-paragraph (b), Article 14, paragraph 3, sub-paragraph 3, sub-paragraph (g), Article 17, last paragraph of Article 19 and Article 22). See also Articles 4(c), 8 and 9 of the 1925 Convention.
43. All these Schedules had been prepared by the Technical Committee of the Plenipotentiary Conference. See further Records of the Conference, vol. II, pp. 263-264
44. The Commission on Narcotic Drugs freed Dextropropoxyphene from control, but the Technical Committee of the Plenipotentiary Conference included it in Schedule II. See also Official Records of the E.C.O.S.O.C., Thirty-seventh Session, Supplement No. 9, paragraph 157.
45. Article 1, paragraph (j).
The French text of the Convention does not use the term "drogue", which is the equivalent of the English term "drug"; instead it has employed the term "stupefiant", which corresponds to the English phrase "narcotic drugs". The term "natural" refers to those substances which are obtained from the opium poppy, coca bush or cannabis plant, while the term "synthetic" includes those drugs which are manufactured by a chemical process. On the other hand, the same drug may be either "natural" or "synthetic", e.g. morphine, which may be manufactured from opium or poppy straw or may be prepared by process of chemical synthesis.
46. Article 2, Paragraph 5(a).
47. Article 2, paragraph 5(b)..
48. Article 2, paragraph (6) and Article 1 of the 1972 Protocol see Articles 22-24; 22, 26 and 27; 22 and 28; 25 and 28 respectively, and Article 12 of the 1972 Protocol.
49. e.g. Article 14, paragraph 2 (Article 6 of the 1972 Protocol), Article 18, paragraph 1, sub-paragraph (e), Article 21 bis of the 1972 Protocol, Article 22 (Article 12 of the 1972 Protocol), Article 25, paragraph 1, sub-paragraph (b) and Article 36, paragraph 1 (Article 14 of the 1972 Protocol).

50. The cases where such regime has been expcepted have been detailed in Article 2, paragraph 2. See also Article 30, paragraphs 2, 5 and 6.
infra., p. 594; see also p. 593
51. The regulations which the Parties are obliged to pursue in regard to trade and distribution have been detailed in Article 30.
52. Under the Limitation Convention the Parties were required only to submit annual statistics on drugs in Group II, and it was not necessary for them to supply figures on actual consumption of such drugs. It is for this reason that the provisions of Article 14, paragraph 1 of the Limitation Convention were only applicable to these drugs, and not those in paragraph 2 (i.e., the embargo provisions).
53. Article 2(2). Drugs under Schedule II are subject to the embargo provisions of Article 21, paragraph 4.
54. The factors which are taken into account for the inclusion of a preparation in Schedule III are:
"(a) Drug content of the preparation;
(b) Potency of the drug;
(c) Nature of the admistures, their degree of effectiveness in conteracting the dangerous properties of the drug;
(d) Practicability of recovery of the drug by illicit traffickers or persons desiring to abuse it;
(e) Therapeutic value and extent of the legitimate use of the preparation".
See also Commentary on the Single Convention on Narcotic Drugs, op.cit., p. 92.
55. Article 1 of the 1972 amending Article 2, paragraph 4 of the Single Convention. "Preparations in Schedule III are subject to the same measures of control as preparations containing drugs in Schedule II except that Article 31 paragraphs 1(b) and 3 to 15 and as regards their acquisition and retail distribution, article 34, paragraph (b) need not apply , and that for the purpose of estimates (Article 19) and statistics (Article 20) the information required shall be restricted to the quantities of drugs used in the manufacture of such preparations".
See also Article 31, paragraph 16, which states that "Nothing in this Article other than paragraphs 1(a) and 2 need apply in the case of preparations in Schedule III".
56. Article 29, paragraph 1, Article 30, paragraph 1, sub-paragraph (a) and Article 31, paragraph 3, sub-paragraph (a).

57. Article 29, paragraph 2, sub-paragraph (b).
58. Article 29, paragraph 2, sub-paragraph (a); Article 30, paragraph 1, sub-paragraph (b), clause (i), Article 31, paragraph 3, sub-paragraph (b).
59. Article 4, paragraph c, and Article 30, paragraph 4.
60. Article 34, paragraph (b).
61. Paragraph 5 of Article 3.
62. Paragraph 5 of Article 2.
 "(a) A Party shall adopt any special measures of control which in its opinion are necessary having regard to the particularly dangerous properties of a drug so included"; and
 "(b) A Party shall; if in its opinion the prevailing conditions in its country render it the appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug except for amounts which may be necessary for medical and scientific research only, including clinical trials therewith to be conducted under or subject to the direct supervision and control of the Party".
63. See further Commentary on the Single Convention on Narcotic Drugs, op. cit., 1961, p. 95.
64. The decisions under the 1925 Convention were taken by the W.H.O. (Articles 8 and 10). Prior to the 1946 Protocol, the responsibility for final decisions lay with the Health Committee of the League of Nations.
 In the case of the Limitation Convention 1931, such decisions were taken by the W.H.O and by the ad hoc Expert Committees, see Article 11, paragraphs 3 and 4 (as amended by the 1946 Protocol) and Article 11, paragraph 4 respectively.
 The 1948 Protocol gave the W.H.O. the ultimate authority for rendering final decisions (Article 1, paragraphs 2-4), and the Commission on Narcotic Drugs authority for provisional control only (Article 2).
65. *supra.*, pp. 501-504
66. *infra.*, pp. 619-620
67. Article 1 (1) (y).
68. Article 31 details the special provisions relating to international trade in narcotic drugs.

69. Article 42 provides for the application of this Convention to all non-metropolitan territories whose previous consent is not needed, and even where prior consent will be necessary, the Convention can be applied on securing such consent.
70. Article 46 refers to provisions concerning denunciation of this Convention by a Party on behalf of a territory for which it has assumed international responsibility, and which has withdrawn its consent given in accordance with Article 42.
71. Incidentally, the 1953 Protocol employed the term "territory" in the administrative sense only (See Article 1)
72. See also Article 13 of the 1972 Protocol.
73. Article 36(2) (b) deals with the extradition of illicit traffickers. See also Articles 13 and 14 of the 1972 Protocol.
74. See also Concise Oxford Dictionary, fifth edition, for the ordinary meaning of the term.
75. Article 9 of the 1912 Convention employed the expression "medical and legitimate purposes"; while Article 5 of the 1925 Convention employed the expression, "medical and scientific purposes". See also Article 13 (1) of the 1931 Convention.
76. See *supra*, pp. 24-25, See also Chapter IV, pp. 206-208
77. United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, Official Records, vol. II, pp. 123, 267, 280 (footnote 8) and 285 (footnote 27)
78. Article 2, paragraph 9
"Parties are not required to apply the provisions of this Convention to drugs which are commonly used in industry for other than medical or scientific purposes, provided that:
(a) They ensure by appropriate methods to denaturing or by other means that the drugs so used are not liable to be abused or have ill effects (Article 3, paragraph 3) and that the harmful substances cannot in practice be recovered; and
(b) They include in the statistical information (Article 20) furnished by them the amount of each drug so used".
See also Article 10 of the 1972 Protocol.

Article 27: Additional Provisions Relating to Coca Leaves

- "1. The Parties may permit the use of coca leaves for the preparation of a flavouring agent, which shall not contain any alkaloids, and to the extent necessary for

such use, may permit the production, import, export, trade in and possession of such leaves.

2. The Parties shall furnish separately estimates (Article 19) and statistical information (Article 20) in respect of coca leaves for preparation of the flavouring agent, except to the extent that the same coca leaves are used for the extraction of alkaloids and the flavouring agent, and so explained in the estimates and statistical information". See also Articles 9 and 10 of the 1972 Protocol.

Article 49: Transitional Reservations

Paragraph 1 of this Article which is more relevant in this connection, states:

"1. A Party may at the time of signature, ratification or accession reserve the right to permit temporarily in any one of its territories:

- (a) The quasi-medical use of opium;
- (b) Opium-smoking;
- (c) Coca leaf chewing;
- (d) The use of cannabis, cannabis resin, extracts and tinctures of cannabis for non-medical purposes; and
- (e) The production and manufacture of and trade in the drugs referred to under (a) to (d) for the purposes mentioned therein".

79. U.N. Conference for the Adoption of a Single Convention on Narcotic Official Records, vol. II, p. 79.

80. e.g. morphine is thought to be used in certain processes of photography. The Commission on Narcotic Drugs, Report of the tenth Session, Official Records of the ECOSOC, Twentieth Session, Supplement No.8, para. 111.
E/2768/Rev 1) (E/CN. 7/303/Rev 1.)

81. *supra.*, p. 589.

82. The maximum periods within which the following must be abolished

- (a) quasi-medical use of opium, 15 years.
- (b) coca leaf chewing, 25 Years.
- (c) use of cannabis for other than medical and scientific purposes, 25 years

83. See also Article 50, Paragraph 3.

84. The term "trade" presumably includes "distribution", "import" and "export".

85. Article 49, paragraph 1 does not refer to "use and possession of drugs".

86. Article 34 only mentions, inter alia, that all persons "... who have managerial or supervisory positions in a State enterprise established in accordance with this Convention, shall have adequate qualifications for the effective and faithful execution of the provisions of such laws and regulations as are enacted in pursuance thereof".
87. *infra.*, p. 772 and pp. 830-831.

CHAPTER VIIILIMITATION ON CULTIVATION

A. The General Provisions Concerning Limitation
on Cultivation

The scope of limitation on cultivation will be examined in respect of poppy straw, coca bush, coca leaves and cannabis. Article 22 of the Single Convention contained special provisions applicable to cultivation. According to this Article, whenever " the prevailing conditions in the country or a territory of a Party render the prohibition of the cultivation of the opium poppy, the coca bush or the cannabis plant the most suitable measure, in its opinion, for protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic, the Party concerned shall prohibit cultivation." ¹

The principal reason for adopting these special provisions is that effective suppression of the illicit traffic in products of the above plants is dependent upon a successful programme of limitation of cultivation of the plants. On an analysis of this Article, it is observed that these provisions of limitation of cultivation are applicable only to the Parties to the Single Convention. Secondly, such limitation by prohibition of the cultivation of the plants concerned should appear to be the "most suitable measure" for the country concerned. Thirdly, whether or not it is the "most suitable measure" under the

prevailing conditions, will be judged by the country concerned.

Fourthly, such measures should be found suitable only if they are necessary " for protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic." Therefore, a Party is not obliged to prohibit cultivation if the product is diverted into the illicit traffic in a smaller quantity than would endanger public health and welfare to a large degree.

One of the positive aspects of this Article is that if the Parties act in good faith, they are obliged to prohibit cultivation for the avowed purposes. It is therefore, expected that the Contracting Parties will take the necessary measures in earnest, especially because any illicit traffic in drugs will have a bearing not only upon the " public health and welfare" of the local population, but also that of foreign countries.² Under the conditions of Article 22, not only cultivation of the poppy for the production of opium, but also that undertaken for the seeds and straw, must be prohibited.³ Although Article 28, paragraph 2 provides that this " Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes", Article 22, according to the U.N. experts, amounts to a covering clause as it would apply to cultivation authorised only for industrial or horticultural purposes, if such cultivation should prove to be a significant source of cannabis or cannabis resin in the illicit traffic, since it would in this case not be undertaken "exclusively" for the authorized purposes.⁴ On the other hand, this would not cover a situation in which the leaves of the cannabis plant

(not accompanied by the tops) are diverted into the illicit traffic.⁵ The special provision of Article 22 has also been made applicable to Article 49, according to which the Contracting Parties have been allowed to reserve their rights to permit temporarily, inter alia, " the use of cannabis, cannabis resin, extracts and tinctures of cannabis for non-medical purposes."

This Convention has made specific provisions for the control of poppy straw.⁶ In terms of this Article the Contracting Parties are allowed to cultivate opium poppy only for purposes other than the production of opium, and then only under adequate measures of control. For more stringent control, the Parties are obliged to apply the system of import certificates and export authorizations ⁷ to poppy straw and shall furnish statistical information on its import and export.⁸ All kinds of poppy straw contain morphine in varying degrees, and therefore, warrant control. The regime of control applicable to poppy straw under the Single Convention corresponds to that of the 1953 Protocol.⁹ Control of the production of poppy straw will, ipso facto, mean control of the production of opium. "Poppy straw" not being considered a "drug", the Single Convention has not envisaged the incidence of illicit traffic in it, nor has it made the provisions of "action against illicit traffic" ¹⁰ applicable to it.

Article 26 of this Convention prescribes the measures of control in respect of coca bush and coca leaves by restricting their cultivation. It has been left to the judgment of the Parties to the Convention whether or not they would deem it appropriate to cultivate

the coca bush; but once they have decided in the affirmative, the system of control as provided in Article 23 respecting the control of opium poppy shall be applied to both coca bush and coca leaves. Coca leaves are considered to be "drugs" under this Convention,¹¹ and are subject to the regime applicable to Schedule I. The provisions of Article 26, paragraph 1, are applicable to all Parties that permit cultivation of coca bush, irrespective of the purposes for which it is produced.¹² However, the coca leaf preparations, e.g. extracts and tinctures, are not subject to the provisions of Article 26, paragraph 1, and consequently, coca leaves may be stocked by manufacturers.¹³ However, the national opium agencies are required "to take physical possession of such crops as soon as possible ... after the end of the¹⁴ harvest." Article 26, paragraph 2 has obligated the Parties to enforce as far as possible the uprooting of all coca bushes growing wild. The Parties shall also destroy the coca bushes, if illegally cultivated. Indeed the Convention has not indicated at what stage a Party should reckon that the coca leaves have grown wild. Despite these apparent gaps, the Parties are expected to observe the general obligations undertaken by them in Article 4, in their attempt to fulfil the avowed purposes of this Convention.

This Convention has made certain special provisions relating to coca leaves (Article 27), in view of their other use, viz. use for the preparation of a flavouring agent, provided that such leaves do not contain any alkaloids. It is for the Parties to judge whether or not such use of coca leaves should be permitted, but if permitted, they shall furnish separately estimates (Article 19 and Article 9 of the

1972 Protocol) and statistical information (Article 20 and Article 10 of the 1972 Protocol) in respect of such leaves.¹⁵ Such a procedure will enable the International Narcotics Control Board to ascertain the correct quantity of leaves available to the Party by production, import and/or seizure.¹⁶ The question of submitting separate estimates of coca leaves held in stock for preparation of a flavouring agent arises only when such quantity will be utilized exclusively for this purpose, and not also for the extraction of alkaloids.¹⁷

One of the important contributions of the Single Convention has been its concern for the control of cannabis. In terms of Article 28, paragraph 1, the control regime is applicable to the cultivation of the cannabis plant for the production of cannabis or cannabis resin. Paragraph 2 of the said Article provides that this "Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes." This implies that the system of control as provided in Article 23 of the Convention is applicable only to the first situation, i.e., when such plants are cultivated for the production of cannabis or cannabis resin, and not to other situations, i.e., for industrial or horticultural purposes. In terms of Article 4(c), the production of cannabis and cannabis resin should be undertaken only for medical and scientific purposes.¹⁸ The drafters of this Convention had borne in mind that in certain parts of the world, cannabis and cannabis resin are used for purposes which are quasi-medical or not purely medical in the Western sense, yet, it seems that such use

of the above substances is considered to be a medical purpose. However, the application of the provisions of Article 49 has been tied up with those of Article 23. Under the Single Convention, "cannabis" has not been defined as a "drug" although the extracts and tinctures of cannabis have been included in Schedule I as drugs.¹⁹ For obvious reasons, the manufacturers of the extracts and tinctures of cannabis have to possess stocks of cannabis and cannabis resin, but since the manufacturers of opium preparations have also been authorised to possess stocks of opium, it was perhaps thought to be fair to grant the manufacturers of the extracts and tinctures of cannabis the same privilege.²⁰ The provisions of Article 23 are equally applicable to the wholesale and international trade in, and stocks of, cannabis and cannabis resin. Cannabis and cannabis resin are subject to the regime of Schedule IV, whether or not their production is permitted by the Parties to the Convention.

In terms of Article 28, paragraph 3, the "Parties shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant." "Illicit traffic" in this paragraph has a different meaning from the usual.²¹ Articles 35-37, i.e., the Articles concerned with action against illicit traffic in narcotic drugs, will not usually come into force in respect of cannabis leaves, as "illicit traffic", in this context means "trade in these leaves contrary to domestic legal provisions intended to combat their misuse, or to foreign laws governing such trade."²² The Parties are not required to supply to the Secretary-General and to the Board information on seizures of cannabis leaves, as they are required to do in respect of drugs under Article 18,

paragraph 1, sub-paragraph (e). The Contracting Parties are not obliged to prohibit the consumption of leaves for non-medical purposes, although they are expected to take necessary measures to prevent their misuse. It may be observed that the reason for such a provision lies primarily in the fact that the consumption of cannabis leaves is still a part of social life in many countries. The provisions of Article 23 of the Convention are, however, applicable to the cultivation of the cannabis plant, if necessary.

B. A Critical Examination of the Provisions concerning
Limitation on Cultivation

The Single Convention has brought a considerable number of narcotic substances under its control regime. It has advocated a stricter regime of control, yet in many cases, its machinery of control has overtly been flexible. On the one hand, many of its provisions are, for obvious reasons, repetitive of the existing provisions of control (i.e., the provisions which had been devised by the previous drug-conventions), while on the other, the new provisions devised by it have not been effective enough to fill in the apparent gaps in the area of control. Hence it is necessary to

examine critically the provisions of control under this Convention.

(i) When isn't "Changed" the Converse of "Unchanged" ?

Article 3 of the Convention details the "changes in the scope of control". Although the Single Convention may be extended to a substance of any chemical composition, it has in most cases repeated the provisions of the previous drug-conventions.²³ The novelty of including certain drugs in a Schedule, namely, Schedule IV, has not met with much appreciation owing to the fact that the appropriateness of some of the substances, e.g. cannabis and cannabis resin, being placed under this Schedule has been questioned, and indeed, perhaps these substances could not only be deleted but also be transferred from Schedule I to Schedule II.²⁴ It also appears that while some drugs have been included in Schedule IV, without knowledge of their effects on human beings,²⁵ some othermore potent hallucinogenics have not been brought under the control of regime of the Single Convention.²⁶ Like the Limitation Convention, the Single Convention has not made any express provision concerning preparations of drugs in Schedule II "adapted to a normal therapeutic use." Also, this Convention does not contain any express provision as to the inclusion of preparations of drugs in Schedule II "adapted to a normal therapeutic use", in Schedule III, although subsequently, preparations of most drugs have been included in the latter Schedule. It is only by implication that these preparations are in fact "adapted to a normal therapeutic use".

The Single Convention provides for the same regime, i.e., both provisional and mandatory, for narcotic substances included in

Schedule I only; a provision which is similar to those in the Limitation Convention²⁷ and the 1948 Protocol²⁸ in respect of substances included in Group I. In other words, this Convention has not extended its provisional regime to narcotic substances included in Schedule II even though one of the criteria of deciding whether a drug should be included in Schedule II is to consider whether the property in question is "convertible into a substance having addiction-producing or addiction sustaining properties with an ease and yield such as to constitute a risk of abuse not greater than that of codeine",²⁹ a criterion which cannot be ignored in determining whether a substance should be included in Schedule I, despite the fact that the second criterion for a drug coming under Schedule I is whether it is "convertible into substances having addiction-producing or addiction-sustaining properties with an ease or yield such as to constitute a risk of abuse greater³⁰ than codeine."³¹ Owing to the fine difference between "greater" and "not greater", it is observed that provisional measures in respect of drugs in Schedule II should have been subject to provisional control.

The regime which is applicable to poppy straw under the Single Convention corresponds to that in the 1953 Protocol.³² Like the International Opium Convention of 1925 and the Limitation Convention of 1931, this Convention also brings poppy straw under the system of import certificates and export authorizations.³³ Poppy straw is not, however, considered to be a "drug" under the Single

Convention, although some parts of the capsule and the upper part of the stem are thought to be a source of "drugs". This means that poppy straw is not included in "raw materials"³⁴, no statistical reports on the quantities used for the manufacture of drugs would have to be submitted, but reports only on the quantities of poppy straw used for the manufacture of drugs.³⁵ This aspect of control has certainly ignored the ever-growing development in the synthetic process of the manufacture of narcotics, in which poppy straw also plays a role.³⁶ Poppy straw comes under the control regime of the Single Convention only after it has arrived in a drug factory or entered international commerce.³⁷ No single Article in this Convention has been devoted to the limitation of the production of poppy straw for international trade as has been done in the case of opium.³⁸

Regarding coca bush and coca leaves, in terms of Article 26, paragraph 1, if a " Party permits the cultivation of coca bush, it shall apply thereto and to coca leaves the system of controls as provided in article 23 respecting the control of the opium poppy", but the national opium agencies are only required " to take physical possession of the crops as soon as possible after the end of the harvest." In terms of paragraph 2 of this Article, the "Parties shall so far as possible enforce the uprooting of all coca bushes which grow wild. They shall destroy the coca bushes if illegally cultivated." This provision implies that production of coca bush is not prohibited, and once it has been cultivated, the limit will be set by the Parties concerned. It is doubtful how it would be possible to set the limit

after they have started growing. Nor does the provision imply that the Parties are obliged to uproot the illegal cultivation.³⁹ The provision, "so far as possible" has left open the door to illicit trade and traffic in coca leaves, and such activities will thrive in a country in which the national administration is rather weak. Any high expectation of the performance of the "general obligations" as undertaken by the Parties in Article 4 of the Convention, may meet with disappointment, especially when the behaviour of some nations has not shown them to be responsible

The additional provisions⁴⁰ relating to coca leaves are of little practical importance. "The Parties may permit the use of coca leaves for the preparation of a flavouring agent, which shall not contain any alkaloids, and to the extent necessary for such use, may permit the production, import, export, trade in and possession of such leaves."⁴¹ The phrase "to the extent necessary for such use", presupposes that the cultivator of the coca bush will know whether his product will be used for the extraction of the flavouring substance when he collects his crop of leaves, which is not the case.⁴² The Convention has also failed to take into account that not all kinds of coca leaves are suitable for the preparation of the flavouring agent; consequently, illicit cultivation of coca leaves will take place.

Cannabis leaves, according to this Convention, are not drugs, although they are consumed by way of smoking, or as an ingredient of beverages or sweets. In terms of Article 28, paragraph 2, this Convention "shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes." The application of this Convention exclusively to the

cultivation of the cannabis plant for the production of cannabis or cannabis resin, presumably for the production of drugs, has helped maintain the dangers which various types of cannabis plant pose, because of their containing varied amounts of the psycho-active agent.⁴³ To prevent any abuse, it would be necessary to prohibit removal from the fields of any parts of the cannabis plant except the mature stalks and the seeds, and to burn the remainder; but such a measure would be very difficult to enforce, and would render harvesting for the fibre or seeds uneconomical.⁴⁴ It was for this reason that the question of replacing the cannabis plant by other fibre-yielding plants, or of breeding drug-free plants has been considered, but to no effect.⁴⁵

(ii) When "Stringency" Stands for "Leniency".

The Single Convention, for obvious reasons, has not prohibited the cultivation or the production of plants containing narcotic substances; it has only attempted to restrict their cultivation or production. Such restrictions are sometimes direct, while at times they are indirect.⁴⁶ "Restriction" implies "limitation", and for a successful operation of stringent measures restriction must imply that no loophole or discretion is provided. Given this interpretation, it may be worthwhile to examine how the Single Convention fares in fulfilling its function to restrict cultivation or production stricto sensu.

Article 22 of the Convention details some special provisions applicable to cultivation.⁴⁷ The effective exercise of the prohibitory aspect of this Article depends entirely upon the discretion of the Party concerned. It may be observed that the difficulties in implementing this provision, especially in the remote parts of a country may not only be contributory to its non-fulfilment, but also may promote illicit production of and traffic in certain narcotic commodities. Indeed, a "situation may arise in which the government concerned might come to the conclusion that it cannot possibly suppress a significant diversion into the illegal traffic without prohibiting the cultivation of the plant, a measure which it could effectively enforce."⁴⁸ The phrase, "for protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic" does not appear to be sufficiently stringent to stop production or diversion of a relatively small quantity, despite the fact that any amount may pose a threat to public health and welfare, and lead to illicit traffic.⁴⁹ Article 22 does not stipulate whether the seed and straw shall come under its scope. This Convention controls poppy straw after it has arrived in a drug factory or found its way into illicit traffic. Also Article 28 has made no provisions for preventing illicit traffic in the cannabis plant,⁵⁰ when not accompanied by the tops. Once, however, leaves are allowed into illicit traffic, it is probable that the cannabis resin and cannabis would also find their way in the same direction.

Although in Article 25 certain measures of control of poppy straw have been devised, they appear to be rather feeble. "Poppy straw" has not been regarded as a "drug" under the terms of the Single Convention; it has been categorised under "raw materials" which are used for the manufacture of drugs, and hence has escaped from the international narcotics control regime. Under the Single Convention, no statistical report needs to be submitted on the quantities of raw materials, unless such materials (which include poppy straw) have been used for the manufacture of drugs, and in the latter event, the submission of reports only will suffice. This situation has further been aggravated by the fact that the estimates system of the Single Convention does not apply to poppy straw. It is feared that owing to the unhindered progress of chemistry, such raw materials which have some use in the manufacture of drugs, directly or indirectly, might very quickly find their way into illicit traffic, if not under effective control, and indeed, the absence of control in this regard means the weakening of the whole control machinery. In so far as the control of coca bush and coca leaves is concerned (Article 26), it may be observed that the effectiveness of the whole provision has been made dependent upon the sense of obligation of the Parties to the Convention. Article 26, paragraph 2 provides, inter alia, that the "Parties shall so far as possible enforce the uprooting of all coca bush which grow wild." The expression "so far as possible" pre-supposes that the abilities of the Parties concerning this matter will vary in extent, and so will the effectiveness of

this provision. In addition to this, since coca bush often grows in areas which are isolated and difficult of access,⁵¹ the prospects of exercising effective control, especially when resort to flexibility has been allowed are rather dubious.⁵²

As regards the control of cannabis, Article 28, paragraph 2 stipulates that this Convention "shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes." In other words, this Convention, shall apply exclusively to the cultivation of the cannabis plant for non-industrial purposes, i.e., production of cannabis or cannabis resin. Such a provision, it appears,⁵³ was made on the presumption that the cultivators would not misuse cannabis leaves or any part of the plant containing a potential drug element, so that they would find their way into illicit traffic. Unfortunately, this presumption is ill-founded and deserves immediate attention however difficult this may be.⁵⁴ It may not be out of place to mention that the time lag between the period after the end of the harvest and the taking over of the crop from the cultivators by the national cannabis agencies, should be curtailed from the stipulated period of four months. No strictness is exercised with regard to cannabis leaves in that when such leaves are not accompanied by the tops of the plant, they are not "cannabis", and consequently, not listed in the first two Schedules. It is not necessary for the Parties to supply to the Secretary-General and to the Board any information on the seizures of leaves of cannabis plant, although the normal provisions concerning action against the illicit traffic⁵⁵

apply to these leaves also. In terms of Article 28, paragraph 3, the "Parties shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant." The Convention has not precisely defined what would be deemed as "misuse" of the plant. This implies that a Party, in the name of "medical use" may take the privilege of using these leaves in a large quantity, although they are supposed to take necessary measures to prevent their use in areas other than medical. This situation may become serious, especially in those parts of the world where production of cannabis and cannabis resin is permitted for medical purposes.

C. Comments

The control of certain drugs or substances that act as ingredients of drugs, by restricting their cultivation is only one aspect of the total control machinery. The Single Convention has made a considerable contribution to the restriction of cultivation of various such substances, yet, it cannot be denied that a total control of cultivation to the desired level, is rather too ambitious an expectation. The success of such a programme is fraught with difficulties, visible and invisible. When the consumption of drugs becomes a part of social and religious life, it poses difficulties of a multiple nature. ^{55a} To this must be added the

inevitable cultivation of those plants for economic reasons, which certainly, under a not-so-efficient national control system promotes the illicit traffic in that commodity.

In evaluating the machinery of control, in respect of cultivation, it is essential to see whether the positive or the negative aspect of this control-structure has greater effect. No doubt, there are negative aspects of this control-machinery, i.e., the gaps left in this Convention, yet it may be observed that in certain cases these gaps have been left owing to lack of far-sightedness; while in others, they are inevitable, i.e., unless there is a uniformity of the structures of national administration and a thorough change in the outlook of the peoples, they will, unfortunately, prevail. In addition to this, the absence of any means of control in respect of the cultivation of the drug-plants in the territories of non-contracting parties will always leave open the door to free production.

The positive aspects of this control machinery may be found in the attempts made by the Contracting Parties to bring as many kinds of plant as possible under the scope of the Single Convention, and in their pledges to produce them in a restrictive manner.⁵⁶ Any evaluation in this regard should be directed not only to negative criticism, but also to a critical appreciation of these efforts in the perspective of the difficulties they must encounter.

CHAPTER VIIIFOOTNOTES

1. See also Article 12 of the 1972 Protocol amending Article 22 of the Single Convention.
2. See further Commentary on the Single Convention, op. cit., p. 275.
3. op. cit., p. 276.
4. *ibid.*,
5. Such leaves are not considered to be "drugs" under the provisions of the Single Convention, *infra.*, p. 631.
6. Article 25.
7. See also Article 31, paragraphs 4-15.
8. See also Article 20, paragraphs 1(d) and 2(b).
9. Article 4 of the 1953 Protocol.
10. Articles 35-37; see also Articles 13 and 14 of the 1972 Protocol.
11. Article 1(1)(j) and Schedule I.
12. Incidentally, the regime of Article 23 applies only to a "Party that permits the cultivation of the opium poppy for the production of opium". In other words, such a regime is not applicable to a Party that permits the cultivation of opium poppy for purposes other than the production of opium.
13. See also the Commentary on the Single Convention, op. cit., p. 307.
14. In the case of the opium poppy, physical possession will be taken by the national opium agencies "as soon as possible, but not later than four months after the end of the harvest." (Article 23). The flexibility of this policy in the case of coca bush and coca leaves was mostly due to certain technical difficulties involved in the collection of the crop, e.g. the isolation of areas where they are usually cultivated and hence the difficulty of access to them; see further Records, vol. I, p. 153 and vol. II, pp. 172-173.
15. Article 27, paragraph 2.
16. Article 20, paragraph 1; see also Article 10 of the 1972 Protocol.
17. Article 19(1)(c); see also Form B/S of the International Narcotics Control Board.

18. This however will not prejudice the temporary exemption allowed under Article 49.
19. It is however believed that the extracts and tinctures of cannabis are "preparations" and not "drugs". See further Commentary on the Single Convention, op. cit., p. 314.
20. *ibid.*,
21. Article 1, paragraph 1.
22. See further Commentary on the Single Convention, op. cit., p. 315.
23. *supra.*, pp. 590-592
24. See further Commentary on the Single Convention, op. cit., p. 95. With the coming into force of the Vienna Convention of 1971, cannabis, cannabis resin and extracts and tinctures of cannabis may be placed under its regime if "they are removed from the Schedules of the Single Convention. Article 28, para. 1 of the Single Convention would, however, continue to apply unless this treaty is revised to prevent this. (The same must also be stated in respect to article 22). The effect of reservations under article 49 concerning these cannabis drugs would be restricted to the application of article 28, para. 1. It is however admitted that this legal possibility of transferring cannabis and cannabis resin from the scope of the Single Convention to the regime of the new treaty may be disputed. Some may hold that in view of the continued application of article 28, para. 1, cannabis and cannabis resin are not substances "not yet under international control" within the meaning of article 2, para. 1. of the Vienna Convention." (For the Vienna Convention see E/Conf.58/6). Commentary, op. cit., p. 95.
25. e.g. Etorphine and acctorphine. See also Report on the twenty-second session of the Commission on Narcotic Drugs, Official Records of the Economic and Social Council, forty-fourth session, supplement No. 2, paragraph 43.
26. e.g. Amphetamines, barbiturates and tranquillizers. These hallucinogenics have, however, been brought under the control regime of the Convention on Psychotropic Substances, 1971.
27. Article 1, paragraph 2, Article 11, paragraphs 3, 4 and 6, Article 13, paragraph 1 and Article 18.
28. Article 1, paragraph 2 and Article 2.
29. U.N. Conference for the Adoption of a Single Convention on Narcotic Drugs, op. cit., vol. II (Official Records), p. 264.

30. Italics added.
31. See Official Records, op. cit., vol. II, p. 264.
32. Article 4.
33. Article 31.
34. "Raw materials" in this Convention covers only dangerous substances from which drugs are made.
35. The Contracting Parties, according to Article 29(3), are required to prevent accumulation of poppy straw in excess of the quantity required for the normal conduct of business. The estimates system of this Convention does not apply to poppy straw.
36. Not an insignificant quantity of codeine may be found as a by-product in the manufacture of morphine from poppy straw.
37. See the opinions of the Dutch and Hungarian delegates at the Conference, Official Records, op. cit., vol. II, p. 150. The Indian delegate, however, suggested that since poppy straw contains substantial quantities of phenanthrene alkaloids and sometimes finds its way into the illicit traffic, it should be treated on the same footing as opium. However, he subsequently agreed with the other delegates on this point., *ibid.*,
38. Articles 24 and 25.
39. See further the Report of the Commission of Enquiry on the Coca Leaf (May 1950), Official Records of the Economic and Social Council, twelfth session, special supplement, No.1 (E/1666).
40. Article 27.
41. Article 27, paragraph 1.
42. See also Commentary on the Single Convention, op. cit., p. 309.
43. U.N. Doc. E/CN.7/AC.3/4/Rev.1., paragraph C.358.
44. Commentary on the Single Convention, op. cit., p. 313.
45. Regarding breeding see G. Bredemann, F. Schwanitz and R. von Sengbusch, "Problems of Modern Hemp Breeding with particular reference to the Breeding of Varieties of Hemp Containing Little of no Hashish", Bulletin on Narcotics, vol. VIII, No.3, 1956, pp. 31-34.
 As regards breeding or replacement, see U.N. Doc. E/CN/7/297 (prepared by the Secretariat of the Food and Agriculture Organization in consultation with the Secretariat of the U.N.); see also U.N. Doc. E/CN.7/324, paragraphs 49-56.

46. In such a case the general obligations of the Parties as envisaged in Article 4 will be referred to.
47. See also Article 12 of the 1972 Protocol.
48. Commentary on the Single Convention, op. cit., p. 275.
49. See also Article 12(2) of the 1972 Protocol.
50. See Article 1(1)(b) and Article 28(3).
51. See also Records, vol. II, op. cit., pp. 172-173.
52. As regards additional provisions relating to coca leaves (Article 27), see previous section entitled "When isn't 'changed' the converse of 'unchanged'," pp.
53. U.N. Doc. E/CN.7/324 (1957), paragraphs 49-56.
54. See Report of the Marihuana Investigation of the U.S. Bureau of Narcotics, Summer, 1937, pp. 9-12; see also Commentary on the Single Convention, op. cit., p. 313.
55. Articles 35-37.
- 55(a) *supra.*, Chapter I, Section I.(A).
56. The Single Convention is the first multilateral drug convention which contains provisions governing the cultivation of the coca bush.

CHAPTER IXLIMITATION OF THE PRODUCTION OF OPIUMA. The General Provisions Concerning Limitation on
Production of Opium

As opium was one of the original drugs to be brought under an international control regime, it is appropriate to deal with this drug separately, in order to determine the present state of the control programme designed for it. Opium in the Single Convention has been classified under two categories, viz., medicinal opium and opium. While the former means " opium which has undergone the processes necessary to adapt it for medicinal use", the latter means " the coagulated juice of the opium poppy." ¹ However, the Single Convention has brought all kinds of opium under the same regime by placing them in Schedule I. ² The term " medicinal opium" has found expression in the Single Convention only once, in Article 23, paragraph 2, sub-paragraph (e), ³ wherein it has been provided that medicinal opium and opium preparations may be excluded from government monopoly.

In drafting this Convention, the drafters appear to have taken special care in respect of the control of the production of opium. Article 1 (1)(t) specifies that " production" means " the separation of opium..." from the plants, i.e., opium poppy from which it is obtained. Opium poppy is subject to the special provision applicable to cultivation under the Single Convention, ⁴ i.e., it

shall not be produced if its production endangers the public health and welfare, and allows the diversion of drugs into the illicit traffic.

Article 24 of the Convention restricts international trade in opium and consequently the production of it. According to paragraph 1, sub-paragraph (a) of this Article, a Party intending to produce opium or to increase existing production shall take into account the prevailing world need ⁵ for it, which will be determined by the International Narcotics Control Board.⁶ This is primarily to the end that such production should not be allowed to result in over-production of opium in the world. In addition to this provision, the Convention has imposed an obligation upon the Parties to decide for themselves, whether or not such production or increased production in their territories would result in illicit traffic in opium.⁷ The question of the limitation of production of opium is necessarily linked with that of the production of opium poppy.⁸ The provisions of Article 24(1)(b) have emphasised that the responsibility of limiting or not-limiting the production of opium lies primarily with the Parties to this Convention.⁹ Sub-paragraphs (a) and (b) of paragraph 2 and paragraph 3 determine the eligibility of the Parties which should be allowed to produce and export opium. Sub-paragraph (a) of paragraph 2 allows a Party to produce and export opium not exceeding five tons annually, if it was not producing and exporting opium on 1 January, 1961. Sub-paragraph (b) allows " a Party other than a Party referred to in paragraph 3" ¹⁰ to produce opium for export exceeding five tons

annually. Paragraph 3 allows a Party to continue producing and exporting opium without any limitation upon production, had it been doing so during ten years prior to 1 January, 1961. The criterion of eligibility, as it appears, has been determined by a date only. Again, while in the first case (i.e., sub-paragraph (a) of paragraph 2) there is a positive restriction limiting production and export to five tons annually, no such restriction has been imposed in the latter two cases, (i.e., sub-paragraph (b) or paragraph 2 and paragraph 3). While in the first two cases Parties are required to notify the Board and the Economic and Social Council respectively furnishing them with certain specific information, e.g. the nature of control enforced by the Parties, the names of the receiving countries, amounts of opium etc., in the latter case, no such obligation has been imposed upon a Party, although such a Party is supposed to honour the general obligation which has been undertaken by it in Article 4 of the Convention.¹¹ On the other hand, in considering whether or not to allow a Party to engage in the production and export of opium, the Board shall take into account " the controls in force as required by this Convention." ¹² This necessarily implies that a Party, prior to its notifying the Board of its desire to export opium which it produces, must ensure that adequate control measures have been adopted by it. The Board will also ensure that " the production of opium by such Party does not result in over-production of opium in the world."

The use of the phrase " may recommend" in clauses (i) and (iii) of sub-paragraphs (a) and (b) respectively, of paragraph 2, has

apparently weakened the position. The word " recommendation" has no legally binding effect, yet, the estimate system and the general obligations of the Parties under the Single Convention promote such recommendations to a higher level, giving rise to binding effects.

The provisions of paragraph 3 will be applicable to a non-metropolitan territory which, on attaining independence, becomes a Party to the Single Convention, provided of course such an area exported opium during the ten years immediately prior to 1 January, 1961. A Party shall not import opium from any country or territory except opium produced in the territory of:

- (i) a Party referred to in paragraph 3, i.e., a Party that during ten years immediately prior to 1 January, 1961 exported opium which it produced;
- (ii) a Party that has notified the Board as provided in sub-paragraph (a) of paragraph 2, i.e., a Party that was not an opium-producing country, but since 1 January, 1961 has desired to export opium which it produces, but not exceeding five tons annually; or
- (iii) a Party that has received the approval of the Economic and Social Council as provided in sub-paragraph (b) of paragraph 2, i.e., not a Party that during ten years immediately prior to 1 January, 1961, exported opium which it produced.¹³

Yet, " a Party may import opium produced by any country which produced and exported opium during the ten years prior to 1 January, 1961, if such country has established and maintains a national control

organ or agency for the purposes set out in article 23 and has in force an effective means of ensuring that the opium it produces is not diverted into the illicit traffic." ¹⁴ The expression "produced by any country" includes a non-party to the Convention. This does not, however, mean that the non-parties to the Convention will be in a privileged position in so far as import and export of opium are concerned, because a Party to the Convention may take the advantage of importing opium from the territory of a non-party (whether or not such a non-party has itself produced that opium), in addition to its authorisation to import opium from a Party that had been exporting its harvested opium to that Party during the ten years prior to 1 January, 1961.

However, the importing and exporting countries have undertaken similar obligations, and this finds support in paragraphs 4 and 5 of Article 24. In terms of paragraph 4, the exporting countries are required to limit their exports, which automatically sets limits for the importers. Opium in this Article includes opium preparations, and Parties are not allowed to import opium preparations under this Article. On the other hand, export of such opium preparations as are made from opium that will be authorised for international trade, is not prohibited. Article 24, paragraph 5 has not only allowed a Party to the Convention to produce opium sufficient for its own requirements, but also to export opium seized in the illicit traffic, to another Party in accordance with the requirements of the Convention, i.e., such import and export will be governed by the import certificate

and export authorization system.¹⁵ The export of seized opium is also restricted to medical and scientific purposes,¹⁶ and it must also be within the limits of the total of the estimates of the importing country.¹⁷ On the other hand, any import of seized opium is subject to the limits set by Article 21, paragraphs 1-3. Restrictions as to import and export are equally applicable to seized opium preparations (including seized medicinal opium ¹⁸).

The machinery of control has further been strengthened by making provisions for the establishment of a government agency or agencies in the countries of those member states who permit the cultivation of the opium poppy for the production of opium.¹⁹ From the general intention of the Parties, as embodied in this Convention, it may be stated that the provisions of Article 23 are applicable to all "territories" that are under the supervision of a supervisory authority.²⁰ Such provisions are equally applicable in respect of a Party that temporarily permits the cultivation of opium for the production of opium for quasi-medical purposes or smoking.

A Party whose law has authorised the production of opium only on licence need not set up such an agency. However, where such an agency has been established, it shall be its duty to designate the areas in which, and the plots of land on which, cultivation of the opium poppy for the purpose of producing opium shall be permitted.²¹ This is followed by certain other procedural functions of the opium agencies, e.g. certain details on the licence concerning identification and demarcation of lands etc. This agency, on the basis of past statistics, shall determine the amount of the opium crop which

it shall obtain from that designated area, and allocate lands/ areas accordingly. In practice, officials of the agency inspect from time to time the areas in which poppy has been cultivated, in order to ascertain the approximate amount of crop to be available, and also to take action for effective control of the poppy, if necessary. A record of such inspections, together with the details of the prospective product, including its approximate amount, name of the cultivator etc. is maintained by the agency.

In terms of Article 23(2)(b), only cultivators licensed by the agency shall be authorised to engage in the cultivation of opium poppy. The procedure for issuing such licences is simple. The applicant is required to indicate verbally or in writing the area of land on which he wishes to cultivate opium poppy, and on an enquiry as to the suitability of the person ²² (i.e., that he has not been convicted of any offence connected with narcotic drugs) and also as to the purpose of such cultivation, a licence, indicating the usual particulars, ²³ will be granted to that person. Firms also need authorisations to cultivate opium poppy. ²⁴ The issue and revocation of licences is at the discretion of the National Opium Agencies, and therefore, they cannot be obtained as a matter of right. ²⁵ All licences are non-transferable.

In order to centralise the national control over opium, all cultivators of the opium poppy in a given area are required to deliver their total crops of opium to their national opium agency. ²⁶ This agency shall purchase and take physical possession of such crops as soon as possible, ²⁷ but not later than four months after the end

of the harvest.²⁸ Since the harvesting periods vary from country to country the Convention could not prescribe a definite date by which time the crops should be delivered to the agency, and consequently, the Convention, by implication, imposed an obligation upon the national governments to set such dates as they would deem appropriate. The maximum time-limit of four months²⁹ by which an agency is required to purchase and to take physical possession of the crop does not, however, preclude the agency from requesting a farmer to deliver the crops to it at an earlier date, and in the latter event, opium retained after such a request had been made will be considered as illegal and will be confiscated irrespective of the final date stated in the licence. However, it is believed that the system of purchase of such crops by the national agencies will give an incentive to the farmers to deliver crops promptly for an immediate cash payment against them.

The Convention has also given the national agencies "exclusive right of importing, exporting, wholesale trading and maintaining stocks other than those held by manufacturers of opium alkaloids, medicinal opium or opium preparations."³⁰ In other words, in so far as business in opium (except opium alkaloids, medicinal opium or opium preparations) and maintenance of opium stocks are concerned, a government monopoly has been enforced by the Convention. Conversely, private manufacturers in opium-producing countries may be allowed by their respective governments to manufacture and stock medicinal opium and opium preparations.³¹ "Special stocks"³² and stocks held by "retail pharmacists or other authorized retail distributors and by institutions or qualified persons in the duly authorized exercise

of therapeutic or scientific functions",³³ are also, ipso facto, excluded from the scope of the obligatory government monopoly. However, from the provisions of Article 23, it appears that the national opium agencies are required to purchase the total supply of opium other than opium alkaloids, medicinal opium or opium preparations, irrespective of its size. Therefore, the accumulation of opium, if any, owing to unfavourable market conditions, will be under the control and supervision of the national governments, and indeed, Article 23, paragraph 3 has provided for a single government agency, as opposed to multiple agencies, for the discharge of such governmental functions in order to avoid possible diversities in action in this regard, if of course, the " Constitution of the Party concerned permits it." Should however the establishment of more than one agency be found necessary on constitutional grounds, the national governments must ensure that adequate administrative arrangements have been made for co-ordination in their work.³⁴

The restrictions upon the production of opium have further been strengthened by the penal provisions enumerated in Article 36, paragraph 1 of the Convention.³⁵ By this Article, obligations have been imposed upon the Parties to adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, importation and exportation of drugs are not contrary to the provisions of the Convention. The Parties have also undertaken that any other action which in their opinion may

be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty. Yet, all these provisions are subject to the constitutional limitations prescribed by the Parties,³⁶ and this situation has further been weakened by the provisions of the new sub-paragraph (b) (ii) of paragraph 2 of this Article (as amended by the 1972 Protocol), according to which:

" If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences enumerated in paragraphs 1 and 2 (a) (ii) of this article. Extradition shall be subject to the other conditions provided by the law of the requested Party."

Consequently, it is observed that all the problems associated with "extradition" in international law will ensue.³⁷ Moreover, the provisions of this Article are obligatory to a Party only in so far as they are compatible with the principles of its criminal law,³⁸ and the offences to which it refers shall be defined, prosecuted and punished in conformity with the domestic law of a Party.³⁹

In so far as the control of the traffic in opium is concerned, the Single Convention has made certain novel provisions. Yet, like all other provisions of this Convention, the fulfilment of the provisions concerning the control of traffic in opium is dependent upon the degree of co-operation which the Parties are prepared to extend.

B. A Critical Examination of the Provisions
Concerning Limitation on Production of
Opium

(a) When "Prohibition" Means "Restriction" Only

A prohibition of the cultivation of opium poppy is a condition precedent to cessation of the production of opium. In terms of Article 22 of the Convention, a Party is required to prohibit the cultivation of opium poppy if it considers that such a step would be the "most suitable measure ... for protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic." Conversely, a Party will not be required to take such a step if the above two conditions do not prevail. Therefore, a Party is not obliged to prohibit the cultivation of opium, if it is diverted only in minor quantities, thus not presenting an immediate threat to the public health and welfare.⁴⁰

The word "prohibition" means "forbidding", "forbidding by law ..."⁴¹ In other words, it signifies an order emanating from a superior authority. According to Article 22 of the Convention, a Party shall prohibit the cultivation of the opium poppy, if in its opinion such a measure is necessary for "protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic." Since trade in opium may contribute to the economy of a country, and since the effectiveness of control very much depends upon the administrative machinery which a country has preferred to adopt in this regard, "prohibition" in this context should not be taken in its absolute sense. Technically speaking,

"prohibition" here takes the form of "restriction" only. Indeed, in the Commentary on the Single Convention, it has been observed that a "Government which, for many years, despite its efforts, has been unable to prevent large-scale diversion of drugs from cultivation can hardly be of the opinion that prohibition of such cultivation would not be the most suitable measures... for protecting public health and welfare and preventing the diversion of drugs into the illicit traffic."⁴² It is submitted, however, that this applies only to areas which are under the effective control of the governmental authorities, and not to those which are not so controlled.

(b) Controlling Without Organising

The Single Convention does not prohibit private farmers from cultivating opium poppy; it only makes such cultivation subject to the provisions of Article 23. The national opium agencies will, therefore, not only find it difficult to ascertain the exact quantity of such plants and consequently drugs produced, but will also lose control over such cultivators especially those engaged in business in the remote parts of a country. The Convention has no application to those non-metropolitan areas that have refused to give their consent to be bound by it.⁴³ Article 23 has also no application to those countries that permit the cultivation of the poppy for the seeds and for the straw, as by-products. The drafters of this Convention, it may be observed, have failed to envisage the dangers involved in allowing the cultivation of the poppy for such

purposes, over which control may not be exercised institutionally or otherwise, so that illicit traffic in seeds or straw might thrive with a view to utilising them as agents for the production of drugs.

The Single Convention has provided for national opium agencies with a view to establishing government monopolies through which the wholesale import and export trade in, and maintenance of stocks of opium can be regulated; yet medicinal opium and opium preparations have been excluded from the scope of such monopolies, although opium used for such purposes must be obtained from the national opium agencies.⁴⁴ "Special stocks" and "retail stocks" (i.e., stocks of opium held by retail pharmacists, institutions, authorised retail distributors and other authorised persons engaged in therapeutic and scientific work) are not subject to the control regime of the Single Convention.⁴⁵ The institutionalisation of the opium business under the Single Convention cannot prevent a retail trader or distributor from obtaining medicinal opium and opium preparations from private sources, domestic and/or foreign.

According to the Convention, the national opium agencies are to act as national buyers of the opium crop irrespective of the size of the harvest, in order to sell such stock at the most appropriate time in the future. In other words, such stock will be accumulated until the time is deemed appropriate for its sale. The Convention has not set any limit to the quantity of such stock which may be accumulated by national opium agencies,⁴⁶ and therefore, the

following consequences may ensue:

- (a) that there will be a mountain of opium stock posing a potential risk of illicit traffic in this commodity until it is disposed of;
- (b) that a vigilance force may therefore be necessary to guard the stock; and
- (c) that it may disturb the total world balance of opium crop-stock and the price level of opium crop.

Also, the estimate system of the Single Convention does not apply to poppy straw, which is directly related to the production of opium. The Convention also does not make it necessary for the Parties to furnish any reports on the stock of poppy straw, which may or may not be used for the manufacture of drugs.⁴⁷ Indeed, the incidence of traffic in poppy straw and opium could perhaps have been restricted, if these apparent loopholes had been avoided.

(c) Uprooting the Evil ?

The question of controlling the manufacture of and illicit traffic in opium is closely interwoven with the question of restraining the cultivation of opium poppy. The drafters of the Single Convention did not lose sight of this fact, and indeed, the regime of this Convention applicable to poppy straw is very similar to that of the 1953 Protocol.⁴⁸ However, while the 1953 Protocol provided for annual statistics of poppy straw,⁴⁹ the Single Convention requires statistics of the international trade in the straw on

a quarterly basis. The system of import certificate and export authorisation has been extended to poppy straw under the control regime of the Single Convention.⁵⁰

The manufacture of opium and the cultivation of poppy straw being dependent upon each other, the prospect of uprooting the evil of illicit traffic in either of these products, is remote. It is a question of restricting the possibilities of illicit traffic in these substances by regulatory means. Unfortunately, the Single Convention has not strengthened the control regime in respect of poppy straw to a desirable extent. Poppy straw is not considered to be a "drug", natural or synthetic, under the Single Convention.⁵¹ "Drug" according to this Convention means "any of the substances in Schedules I and II, whether natural or synthetic." While natural substances refer to those substances in the Schedules which are obtained from the opium poppy, coca bush or cannabis plant, synthetic substances refer to drugs manufactured by a process of chemical synthesis. Yet, there are certain drugs that may be produced either naturally or synthetically, e.g. morphine, which may be manufactured from opium or poppy straw, or by a process of chemical synthesis. Therefore, in view of the growing progress in Chemistry, the exclusion of poppy straw from "drugs" in this Convention, has left wide open the door to illicit production of, and traffic in, poppy straw. Indeed, this Convention does not provide for statistical reports on the quantities of raw materials used for the manufacture of drugs; instead such reports are necessary only on the quantities

of other drugs and of poppy straw used for drug manufacture.⁵²
Since poppy straw under this Convention is not an object of illicit traffic, the provisions of Articles 35-37 (the penal provisions against the illicit traffic) do not apply to it.⁵³

It appears that the appropriate control regime of the Single Convention would be applicable to poppy straw only after it had entered either the manufacturing process or international commerce.⁵⁴
Hence the "concentrate of poppy straw", which " forms only an intermediary stage in a continuous process of manufacture of morphine from poppy straw" ⁵⁵ does not come under the control regime of this Convention.

In view of the above, it may be observed that so long as these gaps in the control regime of the Convention are left unattended, the prospect of uprooting the evil of traffic in poppy straw and opium is out of the question. Although the cultivation of poppy exclusively for its straw would be uneconomical, the straw can be sold by the farmers for the manufacture of morphine.⁵⁶

(d) The Improbabilities of Limitation of Production

The Single Convention not only emphasised the need for limiting the production of opium to medical and scientific needs,⁵⁷ but also made provisions for (i) prohibition of the cultivation of the opium poppy for protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic; ⁵⁸

(ii) establishment of adequate machinery by opium-producing countries for the control of the production of opium and regulation of trade, wholesale and international, through government monopolies;⁵⁹ and (iii) limitation of the production of opium for international trade.⁶⁰

The Single Convention did not envisage the total prohibition⁶¹ of the production of opium because of the medical and scientific need for it. Yet, its attempts to limit the production of opium have not been totally satisfactory. The prohibition of trade is not applicable to those countries which, before the adoption of this Convention, used to export opium which they produced, or which obtained export authorisation from the Economic and Social Council of the U.N. Other countries may export annually up to five tons of opium produced by them . . . provided they comply with the procedure laid down in Article 24.⁶² However, this Article does not prohibit a Party from cultivating opium poppy; it only makes attempts to restrict the production of opium (i.e., the separation of opium from the poppy⁶³). Therefore, by implication, such a provision (Article 24(1)(b)) would mean that a Party is not required to prohibit the production of opium or increase the existing production thereof if such production or increased production does not threaten its licit use or so long as it does not create illicit traffic in it to a significant degree. The decision whether or not to permit the production of opium, or to increase the existing production thereof, rests upon the Parties to this Convention, and the non-parties are not affected by the provisions of paragraphs (a) and (b) of paragraph 2

of Article 24. The provisions of Article 24 have also application to opium preparations and medicinal opium, and consequently, it may be assumed that the production of substances from opium poppy, other than these two, is permissible under the Single Convention.⁶⁴

Again, this Convention has, it may be observed, adopted a very ambitious plan for the limitation of the production of opium for international trade, without foreseeing the impracticability of its implementation by the comparatively poorer opium-producing countries, on economic grounds. In other words, such countries would be reluctant to enter the international market of opium with such a limited scope of business.⁶⁵ On the other hand, although an opium-exporting country is required to inform the Economic and Social Council of the U.N. of the estimate of the amount of opium it intends to produce for export and the names of the countries to which it expects to sell opium, the Party concerned is not legally bound by those data even after it has received the Council's approval, let alone by the latter's recommendation to the Party concerned not to engage in the production of opium for export. In reality, such a Party may even export opium to countries other than those named in the notification, including non-parties.⁶⁶

Article 24, paragraph 3, has given certain countries an unfettered right to export opium which they produce if, during the ten years immediately prior to 1 January, 1961 they exported opium. Two interpretations may be given to this proviso, viz. (a) the countries concerned may continue exporting opium whether or not they themselves produced any opium during the ten years immediately prior to 1 January, 1961 for the purpose of exportation, and consequently, if they were exporting opium on importation, they are directly encouraged to produce opium;

and (b) that the countries concerned exported the opium which they themselves produced during the aforesaid period. Whichever interpretation is given to this proviso, by coincidence, the following countries, in which the production of opium has posed considerable problems, have been the beneficiaries of this right: Afghanistan, Bulgaria, Burma, India, Iran, North Viet-Nam, Pakistan, Turkey, U.S.S.R. and Yugoslavia.⁶⁷

Article 24(4)(b) has created an anomaly in respect of the importation and exportation of opium and, consequently, it will have a bearing upon the production of opium. In terms of paragraph (b), a Party may "import opium produced by any country"⁶⁸ which produced and exported opium during the ten years prior to 1 January 1961..." Prior to the coming into force of the Single Convention, it is unlikely that the importing countries maintained a record of whether or not the exporting countries actually produced that quantity of opium, even though assuming that certificates of origin were necessary for the exportation of goods, and therefore some countries, in order to gain an advantage under this sub-paragraph, will start producing opium. On the other hand, assuming that certain countries had maintained records of their opium trade prior to the coming into force of this Convention, then, while certain countries will be entitled to export opium under Article 24, certain others will not, and the countries in the latter category (perhaps non-parties to this Convention) may engage in illicit traffic in opium, and indeed, the expression, "by any country" in sub-paragraph (b) includes non-parties to this Convention. In order to avoid this

incidence of the illicit traffic in opium, it may be advisable that the Parties, when importing opium from non-parties, insist on their producing certificates of origin to the effect that the opium in question has been produced in their respective territories,⁶⁹ whether or not such countries maintained any records of transactions during the ten years prior to 1 January, 1961. In any event, non-parties are not bound by the obligations of the Convention to the same extent as the Parties.

C. Comments

The Single Convention has devoted three Articles⁷⁰ exclusively to the programme of controlling poppy straw and the production of opium for international trade, in addition to the general obligations of the Parties to the Convention,⁷¹ and special provisions applicable to cultivation.⁷² This Convention has in many respects followed the pattern adopted by the previous conventions in respect of the control of the production of opium. Although the functions of the national opium agencies have been considerably extended in the present Convention, their practical implementation depends largely upon the co-operation extended by the nations, whether or not Parties to the Convention. As in many other areas of international law, in respect of the control of poppy straw and the production of opium for international trade, the Convention has greatly relied,

for the fulfilment of the treaty obligations, upon the good faith of the nations.

However, it is to be appreciated that, being the oldest kind of drug, the influence of opium upon various societies has not only been far-reaching, but also varied. . With this, should be taken into account its use for medical⁷³ and scientific purposes. The production of opium cannot totally be stopped because of the obvious useful purposes it serves; on the other hand, its abuse is occasioned by various factors- economic, social and cultural. Unless a suitable substitute is devised, especially to counteract the economic necessities which prompt its production and gradually lead to illicit traffic, and an effective programme of education, directed towards uprooting the evil from the minds of the people, is implemented, all weapons of law are bound to meet only limited success.

CHAPTER IX

FOOTNOTES

1. See Article 1, paragraph 1, sub-paragraphs (O) and (P). The Hague Opium Convention of 1912 (Introductory paragraphs of chapters II and III) and the International Opium Convention of 1925 (Article 1) classified "opium" under three categories, viz. " raw opium", "prepared opium" and "medicinal opium", and they provided separate control regimes for each of them. The 1953 Protocol, however, abolished these differences and brought them under one control regime. In the 1953 Protocol "opium" has been defined as " the coagulated juice of the poppy in whatever form including raw opium, medicinal opium and prepared opium ... " (Article 1).
2. Opium preparation and manipulated opium are also subject to the control regime of the Single Convention, see Article 2, paragraphs (1) and (3):
3. Article 23, paragraph 2, sub-paragraph (e):
" The Agency (i.e., the National Opium Agency) shall, in respect of opium, have the exclusive right of importing, exporting, wholesale trading and maintaining stocks other than those held by manufacturers of opium alkaloids, medicinal opium or opium preparations. Parties need not extend this exclusive right to medicinal opium and opium preparations."
4. Article 22; see also Article 12 of the 1972 Protocol.
5. For an account of the estimates system, infra.,
6. Estimated World Requirements of Narcotic Drugs and Estimates of World Production of opium are published by the International Narcotics Control Board annually.
7. Article 24, paragraph 1, sub-paragraph (b).
8. See Article 25.
9. Sub-paragraph (b): " A Party shall not permit the production of opium or increase the existing production thereof if in its opinion (italics added) such production or increased production in its territory may result in illicit traffic in opium."
10. Paragraph 3: " Notwithstanding the provisions of sub-paragraphs (a) and (b) of paragraph 2, a Party that during ten years immediately prior to 1 January 1961 exported opium which such country produced may continue to export opium which it produces."

11. The countries that produced opium for export as of 1st January, 1961 were: India, North Viet-Nam, Turkey, the Union of Soviet Socialist Republics and Yugoslavia; the countries that during ten years immediately prior to 1st January, 1961 exported opium which they produced were: Afghanistan, Bulgaria, Burma, India, Iran, North Viet-Nam, Pakistan, Turkey, the Union of Soviet Socialist Republics and Yugoslavia.
Reports of the Permanent Central Board E/OB/17, table I, pp. 12-13 and table IX.1., pp. 44-45 and E/OB/18, table I, pp. 12-13 and table IX.I, pp. 44-45; see also information furnished by the Secretariat of the International Narcotics Control Board.
12. Article 24, paragraph 2, sub-paragraph (a), clause (i).
13. See Article 24, paragraph 4, sub-paragraph (a).
14. Article 24, paragraph 4, sub-paragraph (b).
15. Article 31, paragraphs 4-15.
16. Article 4, paragraph (c).
17. Article 31, paragraph 1; see also Article 9, paragraph 2, sub-paragraph (b) of the 1972 Protocol.
18. Article 24, paragraph 5, sub-paragraph (b).
19. Article 23, paragraph 1.
20. Nowhere in Article 23 has the term "territory" been used.
21. Article 23, paragraph 2, sub-paragraph (a).
22. "Person" in this context includes an individual or a corporation.
23. Such particulars include the identity of lands (sub-paragraph (c) of paragraph 2), conditions of delivery of the crop to the agency and the name of the person who should be responsible for the control of production of poppy under the licence.
24. Such authorisation, in fact, amounts to the grant of licence.
25. U.N. Doc. E/NT/9 (November 1955), paragraphs 26, 27 and 29.
26. Article 23, paragraph 2, sub-paragraph (d).
27. See also Article 3, paragraph 5 of the 1953 Protocol.
28. Article 23, paragraph 2, sub-paragraph (d).
29. The 1953 Protocol did not provide for such a maximum time-limit.
30. Article 23, paragraph (e).

31. Under the 1953 Protocol, the manufacture of or wholesale trade in medicinal opium by private manufacturers was not allowed in opium-producing countries (Article 3); see also U.N. Doc. E/NT/9 (November 1955), paragraph 38.
32. Article 1, paragraph 1, sub-paragraph (w).
33. Article 1, paragraph 1, sub-paragraph (x), clause (iv).
34. U.N. Doc. E/NT/9 (November 1955), paragraph 24.
35. See also Article 14(1)(b) of the 1972 Protocol.
36. Article 36(2).
37. *infra.*, pp. 731-737 and pp. 746-748.
38. Article 36(3).
39. Article 36(4).
40. See further Article 12(2) of the 1972 Protocol amending Article 22 of the Single Convention.
41. See Concise Oxford Dictionary, fifth edition, p. 977.
42. Commentary on the Single Convention, op. cit., p. 276.
43. Article 42; see also Article 46(1).
44. Under Article 3 of the 1953 Protocol, private manufacture of and/or wholesale trade in medicinal opium allowed only under the authorisation of the government concerned. See U.N. Doc. E/NT/9 (November 1955), paragraph 38.
45. See also Article 1(1)(x).
46. Article 5 of the 1953 Protocol provided that the opium stocks of Parties should not exceed certain limits.
47. Such reports are necessary only on the quantity of opium straw used for the manufacture of drugs; *infra.*,
48. Article 4 of the Protocol.
49. Article 4(c).
50. Article 31, paragraphs 4-15 and Article 25, paragraph 2.
51. *supra.*, p. 619 and p. 626
52. See also Commentary on the Single Convention, op. cit., p. 304.

53. See also Article 14 of the 1972 Protocol. Since no evidence of illicit traffic in poppy straw had been found, the Permanent Central Board had no strong views on the matter. See further Official Records, vol. II, op. cit., p. 151.
54. See further Official Records, vol. II, p. 150.
The Dutch delegate, however, pointed out that poppy paste should be subject to the same provisions as opium, including those regarding the limitation of stocks, *ibid.*,
55. Commentary on the Single Convention, op. cit., p. 249.
See also Article 20(1)(b).
56. Although the third draft of the Single Convention provided for poppy straw the same regime as applicable to opium, this proposal did not find support at the Plenipotentiary Conference on the grounds that it would neither be justifiable nor practicable. Official Records, vol. II, op. cit., pp. 11-13 and 23.
57. Article 4(c); *supra.*, pp. 638-647 and pp. 653-657.
58. Article 22; see also Article 12 of the 1972 Protocol.
59. Article 23.
60. Article 24.
61. For a discussion on the difficulties of ascertaining the quantity of opium required on medical grounds, see *supra.*,
62. Paragraph 2(a) and paragraph 4(a)(ii).
63. Paragraph 1(b).
For an account of the dangers involved in such a provision, *supra.*, pp. 651-653
64. See also Commentary on the Single Convention, op. cit., p. 290.
65. See also Official Records, vol. II, op. cit., pp. 161-163.
66. In the Commentary on the Single Convention it has been emphasised that the recommendation of the Council under paragraph 2, sub-paragraph (b) not to engage in the production of opium for export is legally binding upon the notifying party involved, p. 293.
The author of this thesis wishes to disagree with this observation. The phrase "notwithstanding the provisions of sub-paragraphs (a) and (b) of paragraph 2" as found expressed in paragraph 3 of Article 24 does not necessarily imply that the provisions of sub-paragraphs (a) and (b) of paragraph 2 are legally binding.
67. See further Official Records, vol. II, op. cit., p. 162.

68. Italics added.
69. See also Commentary on the Single Convention, op. cit., p. 297.
70. Articles 23, 24 and 25.
71. Article 4.
72. Article 22; see also Article 12 of the 1972 Protocol.
73. *supra.*, pp. 266 - 269
Since for a long time, opium has been accepted as a multi-purpose drug, in the medical sciences particularly in the Asian and Latin American countries, difficulties are usually encountered in ascertaining the amount required for a certain period of time.

CHAPTER XMANUFACTURE AND IMPORTATION OF DRUGS:
LIMITATION THEREOF

A. The General Provisions Concerning Limitation
of Manufacture and Importation of
Drugs

Manufacture of drugs by the Parties to the Single Convention shall be under licence except where such manufacture is carried out by a state enterprise or state enterprises.¹ Such licences are required for two purposes: (a) for authorisation to engage in the manufacture of drugs; and (b) for the use of establishments and premises in which such manufacture may take place.² Manufacture of drugs under licence, includes basic drugs, their salts and preparations,³ including preparations in Schedule III. The state enterprises will not, for obvious reasons, need a formal licence in this regard, yet they are not allowed to manufacture drugs, salts and preparations, other than those for which permission may be given to a private manufacturer.⁴ However, a licence will detail the names of drugs, their quantities and the period for which the manufacturer concerned will be allowed to use it, and similarly, where a state enterprise is authorised to manufacture drugs, the aforesaid procedure shall also be observed, in order to ensure that the manufacture of a particular drug in a given country or territory does not exceed the limit permitted by the Single Convention. The licensing authority will enjoy the discretionary power to revoke or amend the licence, both in respect of a private manufacturer and a state enterprise,

although in the former case such discretionary power would have
 " to be limited to the extent necessary to facilitate the economical
 conduct of business by a law-abiding manufacturer." ⁵

6

Like the Hague Opium Convention of 1912 and the International
 Opium Convention of 1925 ⁷, this Convention has also entrusted the
 Parties with the task of controlling all persons and enterprises
 carrying on or engaged in the manufacture of drugs. ⁸ The establish-
 ments and premises must conform to the conditions required to ensure
 control, ⁹ and no alteration to the conditions of licence, including
 the conditions of safeguards of control on the establishments and
 premises, will be allowed without the authorisation of the licensing
 authorities concerned. The Parties are also required to ensure that
 the licensed manufacturers of drugs periodically obtain permits
 specifying the kinds and amounts of drugs which they shall be
 entitled to manufacture. ¹⁰ Such periodical permits are not, however,
 necessary in respect of preparations. While the system of allocation
 of quotas of drugs in this Convention is very similar to that in the
 Limitation Convention of 1931, the system of periodic permits applies
 in respect of territories that may be administered by a Party to this
 Convention. ¹¹ The provisions of sub-paragraph (c) of paragraph 2 of
 Article 29 abolish the supplementary estimates system which was
 followed under the narcotics regime preceding the Single Convention, ¹²
 and require the Parties to implement legislation so as to conform to
 the system of periodic permits, ¹³ thus effecting the quota system.
 Such periodical permits will necessarily enable the governments
 concerned to modify the quota allocated, if necessary, owing to

changed circumstances; on the other hand, they will also enable the governments to detect within a short period if the Parties have produced more or less than the quantity allowed to them. In terms of Article 29, paragraph 2, the "Parties shall prevent the accumulation, in the possession of drug manufacturers, of quantities of drugs and poppy straw in excess of those required for the normal conduct of business, having regard to the prevailing market conditions." The scope of this paragraph which . . . basically corresponds to Article 16, paragraph 2 of the Limitation Convention of 1931, is much wider, and more precise in that it has used the expression "drugs and poppy straw" instead of "raw materials", which appeared in the latter Convention.

The Parties to this Convention have specifically undertaken the responsibility for preventing the accumulation of drugs in the possession of drug manufacturers. Article 16, paragraph 2 of the Limitation Convention did not make it obligatory for the Parties to prevent the accumulation of drugs in the possession of manufacturers, although Article 16, paragraph 1, sub-paragraph (a) provided for strict supervision over the amounts of "raw materials and manufactured drugs in the possession of each manufacturer for the purpose of the manufacture or conversion of any of the drugs or otherwise." It may also be observed that the estimates system introduced by the Limitation Convention imposed certain limitations upon the stocks of drugs which the manufacturers were allowed to hold.

Article 21 of the Convention has enunciated rules for determining the limits of manufacture and importation of drugs in a given country and authorised the Board to take appropriate action if "if appears from the statistical returns on imports and exports (Article 20) that the quantity exported to any country or territory exceeds the total of the estimates for that country or territory..."¹⁴ This regime of Article 21 applies to all substances listed in Schedules I and II.¹⁵ Article 21, paragraph 1 prescribes the rules for computing the maximum amount of drugs a country may obtain in a year, by manufacture and/or import. The countries are bound by their own estimates, and if they fail to include the estimate in respect of a drug, this will mean that the country is not in need of that drug. In determining the quota of drugs for a country, the quantity that has been seized and released for licit use, as well as any quantity taken from special stocks ... for the requirements of the civilian population, shall be deducted.¹⁶ In order to make the above provision operative, the governments are required to report in their annual reports the quantities of drugs seized and released for licit use¹⁷ in a particular year.¹⁸ Any surplus from one year will be adjusted to the estimates for the next year, including the stocks of drugs to be held for the year concerned, in order to regulate the manufacture of drugs in accordance with the provisions of the Convention. The Convention has also authorised the International Narcotics Control Board to request the non-parties to it to discontinue exports of drugs should this be found necessary by the Board.¹⁹ This Convention has also authorised the Board to apply the provisions of Article 21, paragraph 4 to all drugs included in Schedules I and II.²⁰

In so far as the question of limitation of manufacture and importation of drugs is concerned, the provisions of the Single Convention are wider than those of the previous narcotics conventions. To this must also be taken into account the general obligations of the Parties to fulfil the aims of the Convention.²¹ However, the methods which this Convention has devised with a view to limiting the manufacture and importation of drugs, are interwoven with the system of estimates of drugs which the Parties to the Convention would require for a given period. It is therefore appropriate to examine the estimates system adopted by this Convention in the following section. Before doing so, however, it is necessary to examine critically the provisions of the limitation regime under this Convention.

(a) A Critical Examination of the Limitation Regime

The limitation regime of Article 21 of the Single Convention applies to all drugs and substances listed in Schedules I and II, whereas this regime under the Limitation Convention of 1931, 1948 Protocol and 1953 Protocol, applied only to manufactured drugs other than extracts and tinctures of cannabis, and to opium.²² In other words, the limitation regime of Article 21 of the Single Convention has also been extended to extracts and tinctures, cannabis, cannabis resin and coca leaves. Yet, this regime does not govern poppy straw and the leaves of the cannabis plant (when not accompanied by the tops²³), nor has it any application to "production".²⁴ In so far as the system of determining the limits of manufacture and import of drugs

is concerned, the regime of Article 21 does not apply to imported preparations listed in Schedule III, and indeed they are not to be taken into account in establishing the export figures under sub-paragraph (c) of this article.²⁵

On the other hand, in certain situations, the provisions of this Convention appear to be too ineffective to prevent a country from exceeding its limits of manufacture and import, even if it applies them appropriately. This may occur if, near the end of the year, the consumption of a country or territory is unexpectedly high, or if at the time it receives unforeseen large orders for the export of drugs manufactured from other drugs, or of substances made from drugs and not covered by the Single Convention. In such a situation hardly any time is left for preparing the required supplementary estimates and for their proper examination by the Board. The quantities by which a country or territory would, in such a case, exceed its limits of manufacture and import might not be "available" for its requirements in the following year. Such "paper" excesses would not be deducted under Article 21, paragraph 3.²⁶

The Board is also not required to deduct all excesses on account of manufacture and import in accordance with the provisions of Article 21, paragraph 1 and 2; it will do so only in respect of those quantities which remain in stock at

the end of the year. The amounts of drugs which were manufactured and imported in excess of the limits, but were consumed, even in excess of the consumption estimates pursuant to Article 19, paragraph 1, sub-paragraph (a), are not to be treated as "stocks" at the end of the year. This may also be the case if larger quantities of drugs than that estimated under Article 19, paragraph 1, sub-paragraph (b) were used for the manufacture of other drugs, of substances not covered by the Single Convention, or of preparations listed in Schedule III. The manufacture and import of the drugs employed for this purpose may have been in excess of the limits of Article 21, paragraphs 1 and 2.²⁷ By following the formula enumerated in Article 19, paragraph 1,²⁸ it may be said that an excess of manufacture and import at a given year is the amount which exceeds the quantity of stocks to be held at the end of the same year, but the Board deducts only that part of the excess which is not necessary for bringing the existing stocks to the estimated level for the following year. The quantity deducted under Article 21, paragraph 3, is not greater than the amount which should be deducted from the existing stocks at the end of the year to reduce

them to the estimated level for the following year.²⁹ The Convention does not contain any compulsory rules demanding an explanation³⁰ from a government in the event of any excess in the manufacture and/or import of drugs, and consequently, there is hardly any means of deterring a government from exceeding the limits of its manufacture and/or import.

The non-applicability of periodical permits to "preparations"³¹ has opened another route to the illicit manufacture of narcotic substances, as certain preparations, even before their being transformed into "drugs", are independently dependence-producing substances and hence gain marketability . There is no provision in the Convention which limits the manufacture of these preparations.³² Indeed, Article 2, paragraph 3 provides that "preparations other than those in Schedule III are subject to the same measures of control as the drugs which they contain". The provisions of limitation of manufacture do not legally bind the non-parties, even though the Board may request them to comply with certain provisions of this Convention.³³ It may therefore be observed that "limitation" in this context stands for "extension".

(b) Comments:

The plan for the limitation of manufacture and importation of drugs under the Single Convention is laudable, although not novel. This plan has brought under control a few more drugs, substances and preparations than the previous control plans, yet it is not remarkably ambitious. The constant progress especially in chemistry produces new discoveries in the narcotic world, and therefore, any plan, which aims at the suppression of the illicit traffic in narcotic drugs, should be more flexible especially so that it may embrace the new preparations, substances etc. as and when necessary.

On the other hand, the need for drugs, especially for medical reasons, poses a problem, in that, unless the belief in the efficacy of certain crude drugs and preparations, e.g. opium and marijuana has been destroyed, the constant demand for them, will keep the supply of them alive. The more the people succumb to this prejudice as to the necessity of these drugs, the more, concomitantly, will grow the efforts to supply them, even by means of illicit production, manufacture and import. Hence the conclusion that the problem of limitation of manufacture and importation of drugs should be considered along with the question of implementing plans for eradicating the evil of drug-addiction and medical superstition.

In fine, it may be observed that an international control programme in this regard can only be successful when it is coupled with national co-operation, especially in the areas of policing, administration, law and education.

(B) Estimates of drug requirements under the Single Convention as a means of limiting manufacture and importation of drugs

According to Article 19, paragraph 1 of the Single Convention, Parties shall furnish to the Board each year, for each of their territories, estimates on forms supplied by it in respect of the drugs, preparations, substances and opium they may require ³⁴ as well as the number of individual establishments which will manufacture synthetic drugs.³⁵ Such estimates will include the following:

- "(a) Quantities of drugs be consumed for medical and scientific purposes;
- (b) Quantities of drugs to be utilized for the manufacture of other drugs, of preparations in Schedule III, and of substances not covered by this Convention;
- (c) Stocks of drugs to be held as at 31 December of the year to which the estimates relate; and
- (d) Quantities of drugs necessary for addition to special stocks;
- (e) The area (in hectares) and the geographical location of land to be used for the cultivation of the opium poppy;
- (f) Approximate quantity of opium to be produced;
- (g) The number of industrial establishments which will manufacture synthetic drugs; and
- (h) The quantities of synthetic drugs to be manufactured by each of the establishments referred to in the preceding sub-paragraph." ³⁶

Article 1, paragraph 2 of this Convention has made it clear that for the purpose of this Convention " a drug shall be regarded as "consumed" when it has been supplied to any person or enterprise for retail distribution, medical use or scientific research; and 'consumption" shall be construed accordingly." The term "consumption" was not defined in the drug treaties preceding the 1953 Protocol. Generally speaking, prior to the 1953 Protocol this term stood for the use of drugs, other than for government purposes. ^{36(a)} The term " consumed" under the control regime of the International Narcotics Control Board stands not only for " the amounts supplied for retail distribution, medical use or scientific research, to any person, enterprise or institute (retail pharmacist, retail distributors, institutions or qualified persons duly authorized to exercise the therapeutic or scientific functions: doctors, dentists, veterinarians, hospitals, dispensaries and similar health institutions, both public and private, scientific institutes)", but also for quantities dispensed through a national health scheme, regardless of the fact that the system is administered by the state.³⁷ Preparations listed in Schedule III are considered as "consumed" under the Single Convention.³⁸ Therefore, the estimates to be furnished under Article 19, paragraph 1 relate to the drug content of drugs, crude drugs, salts, preparations other than preparations listed in Schedule III. ³⁹ Article 19, paragraph 1, sub- paragraph (a) provides for the estimates of drugs required for domestic consumption. ⁴⁰ Such estimates must not

include the amounts of drugs required for the wholesale manufacture of preparations in Schedule III. The expected consumption of opium, coca leaves and cannabis drugs (cannabis, cannabis resin, extracts and tinctures of cannabis) for non-medical purposes should be submitted to the Board under Article 49, paragraph 3, sub-paragraph (b).

Article 19, paragraph 1, sub-paragraph (b) of the Convention has to a certain extent adopted a negative approach to the total estimate of drugs. In terms of the provisions of this paragraph, the Parties are required to furnish to the Board quantities of "drugs to be utilized for the manufacture of other drugs, of preparations in Schedule III, and of substances not covered by this Convention." Estimates relating to the above kinds of drugs, preparations and substances are to be submitted separately,⁴¹ and they must represent the total amount of drugs to be utilized, irrespective of whether the obtainable products would be used for domestic consumption, export or renewal of stocks,⁴² or if they would be transformed into other drugs by a chemical process. An estimate of "concentrate of poppy straw" to be utilized for the manufacture of morphine must be included, if the concentrate is to be made available in trade.⁴³ If coca leaves are to be used for both manufacture of a flavouring agent and extraction of alkaloids, their quantity should be included in the estimates.⁴⁴ The amount of cannabis needed for extracts and tinctures to be used for medical and scientific purposes should be included in the estimates.⁴⁵ In terms of Article 19, paragraph 1, sub-paragraph (b) only estimates concerning the final products are to be furnished. Paragraph 1, sub-paragraph (c) of the same Article sets the limit as to estimates

relating to stocks of drugs to be held by the Parties. According to this sub-paragraph, Parties are under an obligation to give an estimate of the stocks of drugs which they wish to hold up to 31 December of the year to which the estimates relate. Under the Single Convention "stock" means " the amounts of drugs held in a country or territory and intended for:

- (i) Consumption in the country or territory for medical and scientific purposes;
- (ii) Utilization in the country or territory for the manufacture of drugs and other substances, or
- (iii) Export."⁴⁶

According to the International Narcotics Control Board, drugs held by governments for the normal needs of the civilian population are covered by the term "stocks" as used in Article 19, paragraph 1, sub-paragraph (c).⁴⁷ Estimates of drugs to be held in stock⁴⁸ during a transitional period for non-medical purposes (e.g. opium, coca leaf, cannabis, cannabis resin and extract and tincture of cannabis) should be submitted separately in accordance with Article 49 of the Convention. Estimates of stocks in relation to " other substances" (Article 1, paragraph 1, sub-paragraph (x)) refer to those held for the compounding of preparations in Schedule III.⁴⁹ Coca leaves which will be held by governments for the manufacture of flacouring agent and extraction of alkaloids should be taken into account in determining the estimates under Article 19, paragraph 1, sub-paragraph (c), but the Parties shall inform the Board of the method used to determine the quantities shown in the estimates, and of any changes in the said method.⁵⁰

As regards stocks to be held for export,⁵¹ the Parties are required to indicate their estimates for the following year. Article 19, paragraph 1, sub-paragraph (c) does not require a Party to give separate figures for the drugs to be held in stock for different purposes, although the Board may ask a Party to give figures separately, should it appear to be necessary for examining the methods by which such estimates have been prepared.⁵²

However, "stocks of drugs" in Article 19, paragraph 1, sub-paragraph (c) includes stocks to be held in bonded warehouses, free ports and free zones of the country or territory concerned.⁵³ In terms of Article 19, paragraph 1, sub-paragraph (d), the Parties are required to furnish estimates in respect of "quantities of drugs necessary for addition to special stocks." This provision has been made in order to meet exceptional circumstances. "Special stocks" under this Convention means "the amounts of drugs held in a country or territory by the government of such country or territory for special Government purposes and to meet exceptional circumstances"; and the expression "special purposes" shall be construed accordingly.⁵⁴ Therefore, "special stocks" are those stocks which are held by government purposes" is interpreted by the Board to "include in particular the requirement of the armed forces", and the words "exceptional circumstances" to cover such disasters as major earthquakes or epidemics. Drugs which are held by a government in a free port or free zones, or in a bonded warehouse for such purposes also form part of its "special stocks."⁵⁵ Drugs not held by government authorities, although destined for "special government purposes" and "to meet exceptional circumstances" should be excluded.⁵⁶ Article 19, paragraph 1, sub-paragraph (d) does not

prohibit a government from obtaining drugs from any legitimate source (i.e., by importation, from domestic sources or even from the stocks of drugs seized from the illicit traffic), for the purpose of adding to special stocks.

However, Article 19, paragraph 2, sub-paragraph (a) ⁵⁷ has given the Parties a guideline for estimates of drugs, according to which subject to the deductions referred to in paragraph 3 of Article 21, ⁵⁸ the total of the estimates for each territory and each drug except opium and synthetic drugs shall consist of the sum of the amount specified under sub-paragraphs (a), (b) and (d) of paragraph 1 of this Article, with the addition of any amount required to bring the actual stocks on hand at 31 December of the preceding year to the level estimated as provided in sub-paragraph (c) of paragraph 1. This Convention has also provided for supplementary estimates by the Parties in certain compelling situations. ⁵⁹ As the Convention has not detailed the circumstances necessitating such estimates, it may safely be presumed that the responsibility for justifying such circumstances lies with the Parties. Supplementary estimates, as the phrase suggests, are meant for supplementing the estimates during the currency of a year for which estimates have already been furnished. Yet, any estimates which will be submitted to alter the original estimates for a year, even prior to the commencement of the year (for the purpose of estimates) to which they relate, may be called supplementary estimates, but in all cases the necessity for such estimates must be adequately justified. Unlike the Limitation Convention of 1931, ⁶⁰ the Single Convention does not specify whether any separate rule

should govern supplementary estimates. In the practice of the Board, however, the same rules govern both the regular and supplementary estimates,⁶¹ and this has not yet met with any objection from any government. The Parties have also made the pledge that, subject to the "deductions referred to in paragraph 3 of article 21, and account being taken where appropriate of the provisions of article 21 bis, the estimates shall not be exceeded."⁶²

Like the previous drug conventions,⁶³ the Single Convention has also provided for a statistical accounting system, which is complementary to the estimates system under this Convention. It is therefore necessary to examine the provision for statistical returns, including their function as a means of restraining the manufacture and importation of drugs by governments.

(C) "Statistical Returns" of Governments as a
Complementary Method to the "Estimates Sys-
tem" under the Single Convention

The statistical returns reveal whether a government has exceeded its limits of manufacture and import.⁶⁴ According to Article 20 of the Single Convention the "Parties shall furnish to the (International Narcotics) Board for each of their territories, in the manner and form prescribed by the Board, statistical returns

on forms supplied by it in respect of the following matters:

- (a) Production or manufacture of drugs;
- (b) Utilization of drugs for the manufacture of other drugs, of preparations in Schedule III and of substances not covered by this Convention, and utilization of poppy straw for the manufacture of drugs;
- (c) Consumption of drugs;
- (d) Imports and exports of drugs and poppy straw;
- (e) Seizures of drugs and disposal thereof; and
- (f) Stocks of drugs as at 31 December of the year to which the returns relate."

Such statistical returns will also reveal, *inter alia*, (a) whether drugs have been unnecessarily accumulated in the possession of manufacturers, traders and state enterprises in a country or territory,⁶⁵ and/or (b) whether there is any possibility of diversion of drugs into illicit traffic, and/or (c) the nature of the use of drugs, *ie.*, whether there has been a medical abuse of drugs in a country or territory.

Under the Single Convention, the Board has no authority to compel non-parties to furnish statistical returns; it can only request them to do so. However, the Board must supply forms to both Parties and non-parties to the Convention,⁶⁶ in order to enable them to furnish the required statistical information. Statistical information under Article 20 must be expressed in terms of the pure drug content of the crude drugs; refined drugs, salts and preparations

are also to be taken into account.⁶⁷ As regards preparations in Schdule III only information on the quantities of drugs used in the manufacture of such preparations is required to be supplied. In the case of opium preparations (including medicinal opium), extracts and tinctures of opium, coca leaf and cannabis and other coca leaf preparations, instead of considering the actual content of the basic drug in the determination of statistics, a special method detailing the preparations and their uses, is employed.⁶⁸ In terms of Article 20, paragraph 1, sub-paragraph (a) governments are required to furnish statistical information on " production or manufacture of drugs", but not on both, should a Party be engaged : in both. However, under the Single Convention, whereas " production" means " the separation of opium, coca leaves, cannabis and cannabis resin from the parts from which they are obtained",⁶⁹ "manufacture" means " all processes, other than production, by which drugs may be obtained and includes refining as well as the transformation of drugs into other drugs." ⁷⁰ Therefore, if " manufacture" is the counterpart of "production", then all drugs that are not produced are obtained by a process of manufacture, and consequently, should come under the scope of the Single Convention. But even though the separation of poppy straw and cannabis leaves from their plants is neither "manufacture" nor "production" according to the Single Convention, statistical information on all uncontrolled substances and poppy straw is obtained by the Board.⁷¹ Governments are also required to furnish figures on the pure drug content of the drugs whicy they manufacture,⁷² whether in the form of their bases or their salts. Statistical information also includes information on the quantity of drugs ob_~tained by

manufacture and their transformation into other drugs, if any, although "no data need be furnished on the manufacture of a drug which appears only as an intermediary stage in a continuous process of manufacturing of a drug or a substance not covered by the Single Convention."⁷³

In terms of Article 20, paragraph 1, sub-paragraph (b) governments are required to furnish separately statistical information on the utilization of the following:

- (i) drugs for the manufacture of other drugs;
- (ii) preparations in Schedule III;
- (iii) substances not covered by the Single Convention;⁷⁴ and
- (iv) poppy straw for the manufacture of drugs.

The quantities of drugs used in industry, in addition to those used for medical and scientific purposes, are also to be furnished to the Board.⁷⁵ "Drugs" under Article 2, paragraph 9, sub-paragraph (b) should include "crude drugs" which will be used for the manufacture of "other drugs", and the term should also include "refined" drugs, since "manufacture" includes "refining as well as the transformation of drugs into other drugs."⁷⁶ It is for this reason that governments are required to furnish to the Board the quantities of "concentrate of poppy straw" (which is crude morphine), utilised for the manufacture of morphine, provided of course that such concentrate has been "made available in trade."⁷⁷ The inclusion of "poppy straw", which is not a drug,⁷⁸ for the purpose of statistical returns, although in a limited way (i.e., only that quantity which has been utilized for the manufacture of morphine or for its "concentrate", the latter

only being made available in trade) is noteworthy. However, the amounts of drugs used for the purposes mentioned in Article 20, paragraph 1, sub-paragraph (b) are to be reported only in terms of the pure drug content.⁷⁹

The term "consumption" in Article 20, paragraph 1, sub-paragraph (c) has to be interpreted in the same way as in Article 1, paragraph 2.⁸⁰ The term "consumption" as used in the Single Convention means "the transfer of drugs from the manufacturing or wholesale level of the drug economy to its retail level. Drugs acquired by retail pharmacists for the compounding of preparations in Schedule III are therefore to be considered to have been "consumed" for the purpose of statistical reporting under sub-paragraph (c), and when so utilized are not to be taken into account in compiling the figures under sub-paragraph (b) on drugs utilized for the manufacture of such preparations.⁸¹ Consumption under sub-paragraph (c) stands for consumption for medical and scientific purposes only. Statistics on consumption of drugs for non-medical purposes should be furnished under Article 49, paragraph 3, sub-paragraph (b).⁸² The phrase "consumption of drugs" in Article 20, paragraph 1, sub-paragraph (c) stands for consumption of all drugs.⁸³ Consumption of drugs under this provision also must be expressed in terms of their pure drug content.

"Imports" and "exports" being complementary to each other, Article 20, paragraph 1, sub-paragraph (d) of the Convention, has justifiably made a provision for the submission of statistical returns on "imports and exports of drugs and poppy straw." Statistics on both imports and exports will enable the Board to verify the authenticity of the statistics by comparing the import figures with

corresponding export figures, and advise the government(s) concerned to explain any discrepancies between the two sets of figures. It also enables the Board to examine if any government has exceeded its limit of imports and exports for the previous year, and indeed the Single Convention has, with a view to keeping close vigilance over this matter, provided for quarterly statistics⁸⁴ on those drugs which have been channelled into international trade.⁸⁵ Statistics on imports and exports of drugs used for non-medical purposes may, however, be submitted annually, although the Board reserves the right to ask a government to submit such statistics on a quarterly basis. Procedurally, for the purpose of statistics in this context, "the time of actual movement of the drugs across frontiers" is important and not the date of the import and export authorisation nor that of customs clearance.⁸⁶ In calculating the statistics for the purpose of imports and exports of drugs and poppy straw, the pure drug content of drugs, whether refined or crude, and preparations involved should be taken into account; but no consideration should be taken of international shipments of preparations belonging to Schedule III.⁸⁷ "Poppy straw" in this context not only refers to the straw including that which is not intended for the manufacture of drugs, but also its concentrate, if it has been made available in trade, and therefore, figures concerning both have to be furnished.⁸⁸ Drugs imported for "special purposes" into a country or territory should also be included under this provision,⁸⁹ in addition to their inclusion separately in accordance with Article 10, paragraph 3 of the 1972 Protocol.

The function of statistical returns is not only to give an account of the drugs put into transaction, but also to make a declaration of the drugs in hand, whether by production, manufacture, seizure and/or in the form of stocks. Accordingly, in terms of Article 20, paragraph 1, sub-paragraph (e) governments must also furnish statistical returns in respect of "seizures of drugs and disposal thereof." "Seizure" in this context includes both domestic and international, i.e., the amount of drugs seized on account of their illicit import and export. Disposal of seized drugs includes use of such drugs for "licit" purposes (i.e., consumption, manufacture, addition to stocks other than special stocks), and special purposes, export and even their destruction. Statistics on the disposal of seized drugs should be submitted separately. Such information is especially important, since the amount of drugs seized should be deducted from the total amount of drugs which a government may wish to produce, manufacture and/or import. The figures on disposal of seized drugs should include the quantities seized in previous years, but only disposed of during the year to which the statistics relate.⁹⁰

In terms of Article 20, paragraph 1, sub-paragraph (f) governments are required to furnish statistical information in respect of "stocks of drugs as at 31 December of the year to which the returns relate." The term "stocks" means (Article 1, paragraph 1, sub-paragraph (x) of the Single Convention) the amount of drugs held in

a country or territory for any purpose except:

- (i) the quantities held by retail pharmacists or other authorised retail distributors and by institutions or qualified persons in the duly authorised exercise of therapeutic or scientific functions (e.g. doctors, dentists, veterinarians, hospitals, dispensaries and similar health institutions, both public and private; scientific institutions); and
- (ii) "special stocks" held by a government.

The expression "special stocks" is defined in Article 1, paragraph 1, sub-paragraph (w) of the Convention to mean " the amount of drugs held in a country or territory by the Government of such country or territory for special Government purposes and to meet exceptional circumstances." ⁹¹ Stocks held by a government for the normal needs of the civilian population are not to be considered as "special stocks". In terms of Article 1, paragraph 1, sub-paragraph (x), stocks held for consumption in a country or territory for purposes other than medical or scientific are not to be taken as "stocks". ⁹² The data of stocks under Article 20, paragraph 1, sub-paragraph (f) " should include the quantities in bonded warehouses, free ports and free zones; but if a consignment passing in transit through the country, accompanied by a proper export authorization (Article 15 of the International Opium Convention of 1925 and Article 31 of the Single Convention) is placed temporarily in a bonded warehouse, free port or free zone, pending its further shipment, such consignment

should not be included in the figures of stocks." ⁹³ In terms of Article 2, paragraph 4, statistical returns need not contain any information on preparations in Schedule III. ⁹⁴

The statistical returns in respect of matters referred to in Article 20, paragraph 1 (except sub-paragraph (d)- statistics on imports and exports of drugs and poppy straw) shall be prepared by governments annually and furnished to the Board not later than 30 June following the year to which they relate. ⁹⁵ The statistical returns in respect of imports and exports of drugs and poppy straw shall be prepared quarterly ⁹⁶ and furnished to the Board within one month after the end of the quarter to which they relate. ⁹⁷

The Parties are also required to furnish separately, statistical returns in respect of drugs imported into or procured within the country or territory for special purposes, as well as quantities of drugs withdrawn from special stocks to meet the requirements of the civilian population. ⁹⁸

The expression "special purposes" stands for exceptional circumstances, and should be construed in the light of those circumstances which include, for example, such catastrophic events as large-scale epidemics and major earthquakes. ⁹⁹ This Convention however maintains a difference between "special purposes" in its ordinary meaning and "special government purposes". Quantities of drugs held by a government for the latter purposes include in particular the requirements for the armed forces, and a government is not required to furnish statistical information on drugs utilised on this account. However, a government is subject to the statistical accounting system

of the Single Convention if a quantity of drugs is withdrawn from special stocks to meet the requirements of the civilian population, and such withdrawals, it appears, should be reported both under paragraph 1, sub-paragraph (c) and paragraph 4 of Article 20. Statistical returns, under paragraph 4 of Article 20 are, it is presumed, to be submitted quarterly since they involve, inter alia, statistical data in respect of drugs imported into a country or territory.¹⁰⁰ In practice, the Board requests the governments to furnish figures on imports under paragraph 4, separately, even though they should be reported in pursuance of Article 20, paragraph 1, sub-paragraph (d).¹⁰¹ Statistical information on drugs procured within the country or territory for special purposes, under Article 20, paragraph 4, should, it is presumed, be submitted annually in accordance with Article 20, paragraph 2, sub-paragraph (a).¹⁰²

Both the estimate and statistical returns systems under the Single Convention are fairly elaborate, although not totally satisfactory. The difficulties in making such systems entirely satisfactory are appreciated, although certain apparent gaps in these systems, it is believed, could have been avoided. An attempt has therefore been made to examine critically both these systems, to arrive at an appropriate evaluation.

D. A Critical Examination of the Estimates and
Statistical Returns System

(a) Estimating Grossly ?

The Single Convention has extended the estimates system to cannabis, cannabis resin, extracts and tinctures of cannabis and coca leaves, in addition to those drugs which are already subject to such a system under the previous drug conventions. Article 9 of the 1972 Protocol (amending Article 19 of the Single Convention) has taken over the provisions of Article 18, paragraph 3 of the 1953 Protocol, according to which the Parties are required to furnish estimates of the area on which they intend to grow opium poppy for the production of opium, and of the expected opium harvest. Yet, according to Article 9(1)(f) of the 1972 Protocol, the Parties are required only to give an estimate of the "approximate" quantity of opium to be produced, and therefore the predictable consequences owing to this lenient provision will ensue.

Although the Single Convention has not allowed any "margin" in calculating the estimates of drugs, the practice of making estimates of "consumption" on the basis of average annual consumption during a period of three years preceding that in which the estimates are computed, has virtually amounted to a grant to "margin" for the following reasons: (a) although, in practice, the average figure is allowed to be increased by 10% to justify an increased use of drugs on the grounds, inter alia, of population growth, break out of diseases etc., there may be certain kinds of drugs in respect of which a higher range of margin, i.e., more than 10% may be necessary;

for example, codeine, which has manifold uses in a country which is in the process of social and economic development;¹⁰³ and (b) in certain cases, statistics on past consumption may not be available, especially for the reason that such drugs have come into use recently. The practice of relying upon the judgment of the health authorities in such a situation may give rise to over-estimation or under-estimation (in the latter situation it will obviously be necessary to meet the pent-up demand on special grounds). Unless the health authorities have established a highly integrated and developed control system, the indefiniteness in estimates may give rise to further problems even leading, in certain cases, to illicit traffic in drugs. It is, therefore, suggested that in such a situation the International Narcotics Control Board should be allowed to determine the estimates in consultation with the national health authorities, and that the latter authorities should be permitted to put forward their estimates quarterly, and not annually.

The non-applicability of the estimates system to certain drugs has made it achieve only partial success. The estimated quantities of drugs to be utilized for the manufacture of other drugs, which are to be furnished in accordance with Article 19, paragraph 1, subparagraph (b), should include the amounts of the drugs to be transformed by a chemical process into other drugs, but not the quantities of drugs to be transformed into their salts or to be compounded into preparations. The quantities of drugs needed for refining, and for preparations for use in the form of tablets or ampoules etc., should also be excluded.¹⁰⁴ The practice of taking into account the

final products, and not the drugs or substances which are at intermediary stages of a manufacturing process, presents a further problem in determining estimates of drugs, since some drugs and substances, even passing through such intermediary stages may not only produce considerable narcotic effects, but also may be treated as "drugs" independently.¹⁰⁵

Furthermore, it is feared that the absence of any system of showing separate figures for the drugs to be held in stocks for different purposes,¹⁰⁶ may give rise to an over-accumulation of a particular kind of drug, without the knowledge of the Board, and consequently, illicit traffic in that drug may be caused. Although in accordance with Article 12, paragraphs 1 and 4 and Article 19, paragraph 1, the Board may call for separate figures, in reality, the time-lag between the submission of estimates and the calling for separate figures by the Board may be sufficiently lengthy for the purpose of accumulation of certain drugs, and unless governments have adopted very effective methods of preventing unnecessary stocks, the necessary consequences of accumulation may ensue. Indeed, in estimating stocks, governments, rather than the manufacturers and wholesalers, should take the predominant decision-making role in the light of the circumstances, i.e., in terms of the actual need of drugs to be held in stocks.¹⁰⁷ This argument finds justification in that the conditions which usually determine the size of stocks vary from country to country, and therefore, either the Board should devise certain guide-lines especially regarding stock-estimates for governments,¹⁰⁸ or an even more effective method would be to instruct the

governments to ensure that the stock-estimates as calculated by manufacturers and wholesalers are genuine.

So long as the present system of determining estimates of drugs and substances for medical and scientific purposes remains unchanged,¹⁰⁹ and so long as the habit of drug-taking has not been eradicated,¹¹⁰ the estimates system cannot be fully successful. These situations become further aggravated by the absence of stringent pharmacy laws in various countries. In addition to this, under the Single Convention the Board does not receive information on the stocks of drugs held by retail dealers; governments are required to furnish figures on "consumption" of drugs, which includes the amount of drugs which have been transferred from the wholesale to the retail level. The amount sold to retail level in a particular year may differ considerably from the quantity used for medical purposes (i.e., from actual consumption), and the practice of determining the estimate for retail sale on the basis of average annual sale during three to five years produces only an approximate estimate, and thus open the door to further accumulation of drugs in the hands of retailers.

Although according to the provisions of Article 21, paragraph 3, in the event of any excess manufacture and import by a government, such excess amount shall be deducted from the total of the estimates (as defined in Article 19, paragraph 2)¹¹¹ submitted by that government in the following year, in practice, the statistical data on the stocks available as at 31 December of a given year are due to be furnished to the Board only by 30 June,¹¹² after the end of the year to which they relate, whereas annual estimates of requirements of

narcotic drugs and opium should reach the Board by 1 August and 30 June respectively of the year preceding that to which they refer. Consequently, the Board can determine the excess manufacture and import in a country or territory only late in the year for which the deductions have to be made. The Board's publication containing the figures to be deducted (i.e., the actual total of the estimates) comes out in its third and fourth quarterly supplements to its Annual Statement of the Estimated World Requirements of Narcotic Drugs and Estimates of World Production of Opium,¹¹³ which proves to be too late for many countries, and especially the exporting countries, to take these deductions into account for the purpose of implementing Article 31, paragraph 1, sub-paragraph (b). Indeed, the fact that Article 31, paragraph 1, sub-paragraph (b) uses the phrase " the total of the estimates" in another sense than Article 21, paragraphs 3 and 4 so as to cover also " the deductions referred to in paragraph 3 of article 21 may therefore be of very little practical importance." ¹¹⁴

The effectiveness of Article 19, paragraph 5¹¹⁵ in relation to the estimate of drugs is rather doubtful. In order to make the provision of this paragraph effective, it is necessary that a country's or territory's actual consumption, and utilization for the manufacture of other drugs, of the substances or preparations belonging to Schedule III, the actual stocks and "special stocks", shall not usually exceed their respective estimates which had been originally submitted to the Board, including their modification, where necessary,

by supplementary estimates,¹¹⁶ or as established by the Board.¹¹⁷

Unfortunately, more often than not, such estimates prove to be inaccurate, especially because of the necessity for extra consumption of drugs owing to unforeseen events, and consequently, the previous estimates are required to be exceeded, sometimes even without any prior intimation to the Board of the requirements of supplementary estimates for the increased consumption.

(b) Incompleteness of Statistics

One of the reasons for pursuing the "statistical returns" system is to determine the extent of the illicit traffic in drugs, and to evaluate the effectiveness of the administrative machinery designed to operate this system. In order to make the system successful, it is essential that no gap has been left in so far as the procedural aspect of the statistical returns is concerned. Theoretically, a study of the figures relating to consumption, manufacture, stocks (both ordinary and special) should reveal if any discrepancy in the figures has occurred, very much like balancing out the debit and credit sides of an account, and thus determine the drug-situation in a country.

Regrettably, the Single Convention itself has produced certain anomalies in so far as the statistical return system is concerned, and thus prevented the system from attaining total success. In terms of Article 20, paragraph 1, sub-paragraph (a), statistical returns must

be submitted on the production or manufacture of drugs.

According to this Convention, "production" means "the separation of opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained",¹¹⁸ whereas "manufacture" means "all processes, other than production, by which drugs may be obtained and includes refining as well as the transformation of drugs into other drugs".¹¹⁹ At present, Schedules I and II contain no substance other than opium, coca leaves, cannabis and cannabis resin, which is obtained by separation from a plant. Since the scope of "production" in the Convention has been confined to these four substances, any other substance which may be produced in a similar way will be known as a "manufactured substance" unless of course, the present definition of "production" is changed. The separation of poppy straw and cannabis leaves (when not accompanied by the tops of the cannabis plant) from their plants, in terms of the Single Convention, is neither "manufacture" nor "production", and consequently, governments are not obliged to show the statistics relating to their use in their statistical returns.

In so far as the manufacture of drugs is concerned, the governments are not required to furnish any statistical return on the manufacture of base drugs and their salts.

(They are required to supply figures on the pure drug content of the drugs which they manufacture.) The term "manufacture" as used in the sub-paragraph (a) of Article 20 does not include the transformation of base drugs into their salts. In addition to this, the Single Convention excludes from statistical returns, any substance which is in an intermediary stage in a continuous process of manufacture of a drug, e.g. concentrate of poppy straw, which is an intermediary stage in the manufacturing process of morphine.¹²⁰ This has in fact opened a floodgate to the illicit traffic in certain narcotic substances which can produce incalculable harmful effects, e.g. heroin forms only an intermediary stage in the process of manufacture of nalorphine; yet heroin itself is a harmful narcotic substance. It may be observed that the regime to which poppy straw¹²¹ is subject should have been made applicable to many intermediary substances which produce dangerous narcotic effects.

As regards statistical returns on "seizure of drugs", Article 20, Paragraph 1, Sub-paragraph (e) does not oblige the Parties to furnish any information on their statistical returns on the seizure of cannabis leaves when not accompanied by the tops, although the Commission may request the Parties to supply this information to the Secretary-General, should it find it necessary for them to do so.¹²² The Convention has also

provided that, for the purpose of statistics, " the information required shall be restricted to the quantities of drugs used in the manufacture of such preparations," ¹²³ i.e., the preparations in Schedule III; in other words, governments are not required to supply statistical information on the amounts of drugs contained in preparations in Schedule III, which they may seize. It is also not necessary for governments to furnish information separately on how the seized drugs have been appropriated by them for licit purposes, even though such information is of particular importance, in that those amounts of drugs must be deducted from the amounts which the country or territory may obtain by manufacture and import in the year in which they are so released.¹²⁴ The Convention has indirectly exempted small countries or territories on stocks of drugs, if they do not manufacture nor engage in the wholesale trade in drugs, but only obtain their requirements through imports by retail pharmacists.¹²⁵

Under the 1953 Protocol, the Parties were required to furnish statistical information in respect of areas (in hectares) cultivated for the production of opium and in fact, this provision caused much controversy at the plenary meeting concerned. The Indian delegate, however, suggested ¹²⁶ an amendment to replace the word "may" in Article 20, paragraph 3 of the Single Convention by "shall", but to no effect, the primary reason for not accepting

this amendment being that it would serve no useful purpose and therefore should not appear in an international convention.¹²⁷ The 1972 Protocol is an improvement upon the 1953 Protocol in that Article 10 of the latter Protocol has provided, *inter alia*, that the "Parties shall furnish to the Board for each of their territories, in the manner and form prescribed by the Board, statistical returns on forms supplied by it in respect of the following matter:

...

(g) Ascertainable area of cultivation of the opium poppy."

Furthermore, according to Article 20, Paragraph 3 of the Convention,¹²⁸ the "Parties are not required to furnish statistical returns respecting special stocks". "Special stocks" in this connection stands for "the amounts of drugs held in a country or territory by the government of such country or territory for special Government purposes and to meet exceptional circumstances".¹²⁹ The expression "for special government purposes" includes, especially, the use of drugs for the armed forces, and the expression "exceptional circumstances" includes catastrophic events, such as large-scale epidemics and major earthquakes.¹³⁰ One of the reasons behind such a provision is presumably that government authorities are supposed to be responsible enough to see that the amounts of drugs which have been released in these circumstances do not find their way into the illicit traffic. On the other hand, it may be argued

that governments should not experience difficulties in maintaining statistical accounts of such supplies of drugs, and informing the Board of the actual amount of supply. Unless all governments authorities behave in an equally responsible way, it may also be pointed out that in the case of any surplus, owing to over-supply or return of the normal situation much earlier than expected, advantage may be taken of this surplus amount, i.e., it may find its way into the illicit traffic, in the absence of any system of submitting statistical returns to the Board.

(e) Comments:

As stated before, the systems of submitting estimates (before the use of drugs) and statistical returns (after the use of drugs, and narcotic substances) are complementary to each other. Needless to say that they would be uniquely complementary, if no gaps had been left in the methods of their calculations. The Single Convention has mainly followed the 1931 Convention and the 1953 Protocol, in so far as submission of estimates of drugs to the Board and the statistical returns are concerned; yet this Convention, despite its wider scope than the previous drug conventions, has in many cases left certain apparent gaps, which have been detailed in the previous Sections. However, the success of the estimates and statistical returns systems depends

very much upon the co-operation the national governments are willing to extend. In addition to this, efficient and effective pharmacy laws governing, in particular, the retail sale, including the maintenance of comprehensive records of amounts of narcotic drugs and substances bought and sold, are the pre-requisites of the success of the above systems.

CHAPTER XFOOTNOTES

1. Article 29. Licence in this context refers to a written government authorisation, whatever name may be given to it in a municipal legal system.
2. Article 29(2)(b). A separate licence is necessary for each establishment and premises on which manufacture of drug(s) may take place.
3. Article 2, paragraphs 3 and 4 of the Single Convention and Article 1 of the 1972 Protocol.
4. A private manufacturer may mean a firm or even an individual.
5. Commentary on the Single Convention, op. cit., p. 318.
6. Article 10(1)
7. Article 6.
8. Article 29(2)(a).
9. This is chiefly with a view to preventing diversion or theft of drugs. See further U.N. Doc. E/CN/7/519, pp. 33 and 93.
10. Article 29(2)(c).
11. Article 21, paragraphs 1-3.
12. Article 3 and Article 5(5) of the Limitation Convention, 1931.
13. These permits should not be confused with licences. Whereas the former is an authorisation of a limited nature allowing a manufacturer to manufacture drugs until further notice, the latter is a general authorisation certifying the eligibility of a manufacturer to manufacture drugs under certain conditions.
14. Article 21(4)(a).
15. Prior to the coming into force of the Single Convention, the limitation regime applied only to substances falling under the Limitation Convention of 1931 and the 1948 and 1953 Protocols, i.e., manufactured drugs other than extracts and tinctures of cannabis and opium. It was also not applicable to cannabis, cannabis resin and coca leaves.
16. Article 21(2).

17. Drugs released for "licit use" not only includes the drugs which have been released for commercial purposes, but also those which have been released to the non-profit distributors.
18. Form C/S (5th edition, November 1970) table II, column F, p. 8.
19. Article 21 (4); see also Article 14(2) of the Single Convention and Article 6 of the 1972 Protocol.
While, under the previous Conventions, the Permanent Central Board had an obligation to impose an embargo in the event of excessive imports, the Single Convention authorises the International Narcotics Control Board to exercise its discretion as to whether or not such an embargo should be imposed upon a country.
20. Under the Limitation Convention the Parties were only required to submit annual statistics and not quarterly statistics in respect of the drugs included in Group II (Article 13(2)(c)(i) of the Limitation Convention of 1931).
21. Article 4.
22. See Articles 6, 7, 8, 12 and 14(2) of the Limitation Convention of 1931 and Article 8, paragraphs 10 and 11 of the 1953 Protocol.
23. These substances are not listed in Schedule I or Schedule II, and are therefore not "drugs".
24. " Production" under the Single Convention means " the separation of opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained. See Article 1(1)(t).
25. See instructions 3 and 4 of Forms C/S and A/S of the International Narcotics Control Board (November 1970 edition).
26. See Commentary on the Single Convention, op. cit.; see also U.N. Doc. E/CN.7/484/Rev.1, paragraph 88 , and the Commentary on the Limitation Convention of 1931, paragraph 89.
27. See the Commentary on the Single Convention, op. cit., p. 269.
28. See also Article 9 of the 1972 Protocol.
29. See U.N. Doc. E/INCB/W.7 (May 1968), paragraph 12; see also Commentary on the Single Convention, op. cit., p. 269.
30. The Board may only request such explanations under Article 13(3); see also Article 6 of the 1972 Protocol amending Article 14, paragraphs 1 and 2 of the Single Convention.
31. Article 29(2)(c).

32. Official Records, vol. I, p. 27 and vol. II, pp. 124-125.
33. Article 14, Article 21 and Article 31(1)(b).
34. "The Board shall fix the date or dates by which and the manner in which, the estimates as provided in article 19 shall be furnished and shall prescribe the forms therefor."
Article 12, paragraph 1; see also Article 12, paragraphs 4 and 5 of the Single Convention concerning supplementary estimates of drugs. Article 12, paragraph 5 (of the Single Convention) should be read with Article 5 of the 1972 Protocol.
35. Article 19 of the Single Convention; see also Article 9 of the 1972 Protocol.
36. Article 19 of the Single Convention and Article 9 of the 1972 Protocol.
- 36(a) Prior to the 1953 Protocol, the governments were advised by the Permanent Central Board to supply their "consumption" statistics along the following line:
"Unless a Government has established that in column 1 ("Consumption other than for Government purposes") should be reported the quantities supplied to pharmacists, doctors, dentists, veterinarians and to hospitals, dispensaries and similar health institutions both public and private that have authority to supply narcotic drugs. Quantities of drugs dispensed through a national health scheme would also figure in this column, regardless of the fact that the system is administered by the state. The figures in column 1 should not include amounts consumed in the form of exempted preparations". Form C/1 of the Permanent Central Board (Title: Annual Statistics of Consumption, 9th edition, November, 1959, Instruction No.4).
37. See Form C/S of the International Narcotics Control Board, 5th edition, November, 1970, Instruction No. 3.
38. The drugs contained in such preparations are, however, separately shown in the statistics by governments. This is necessary for the purpose of ascertaining the drugs used in the manufacture of preparations in Schedule III- Article 2, paragraph 4 and Article 20, paragraph 1, sub-paragraph (b). Governments are also obliged to furnish estimates of the quantities of drugs which they require for the manufacture of such preparations (Article 2(4) and Article 19(1)(b)).
39. In so far as the estimates of "consumption" are concerned, the Board advises that such estimates should be established on the basis of the features of past consumption. An average calculated on the basis of consumption over the period of the past three years may be a useful guide. The Single Convention, however, has not encouraged the system of "margin" for adjustment of demand in the

39. case of contingencies, which was a feature of the Limitation Convention of 1931. (The 1953 Protocol also did not support the policy of "margin" in estimating the requirements of drugs). The absence of the "margin" system in the Single Convention lies in the fact that the stocks of drugs which the Parties are supposed to maintain presuppose a consideration of such "margins".
40. According to the corresponding provisions of the Limitation Convention and the 1953 Protocol (Article 5(2)(a) and Article 8(1) (a) respectively) the estimate for "consumption" included the amounts needed for the compounding of "preparations for the export of which authorizations are not required." The consumption of drugs whether for domestic or other purposes had no relevance.

However, in so far as the Single Convention is concerned, the Board requests the governments not to include the amounts needed for the stocks of manufacturers, wholesalers and importers other than the retail pharmacists. Yet, should the circumstances require an increase in the "stocks" of retail distributors, (the stocks of retail pharmacists are not stocks under the Single Convention; see also Article 1(1)(x)), such a quantity may be taken into account in computing the estimates of consumption, whether it is to be obtained by manufacture or by import. See further Commentary on the Single Convention, op. cit., p. 225.
41. See Form B/S of the International Narcotics Control Board, 7th edition, March, 1971.

Under the regime preceding the Single Convention, a consolidated figure had to be given in respect of each drug needed for conversion (see Article 1(4) and Article 5(2)(b) of the Limitation Convention, 1931). Article 8(1) (b) of the 1953 Protocol however required information on the estimated quantities of opium required for the manufacture of alkaloids.
42. See Form B/S, General Instruction 10; see also Estimated World Requirements, 1970, paragraph 28, the "Yellow List" (Annex to the statistical forms) and the Multilingual List of Narcotic Drugs under International Control.
43. See further Commentary on the Single Convention, op. cit., p. 227.
44. Coca leaves to be used for extraction of alkaloids in pursuance of Article 27(2) are subject to estimates and statistical information.
45. The amount of cannabis required for the manufacture of drugs for non-medical purposes would be subject to estimates pursuant to Article 49(3)(b).
46. Article 1(1)(x).
47. See also Form B/S of the International Narcotics Control Board (7th edition, March, 1971). General Instructions 14 and 13; see also Commentary on the Single Convention, op. cit., p. 229.

48. Such "stocks" are not "stocks" in terms of Article 1, paragraph 1, sub-paragraph (x).
49. According to the Commentary on the Single Convention, however, such estimates will include an account of the stocks of drugs which are intended for use in industry for other than medical and scientific purposes under Article 2, paragraph 9, whereas the aforesaid Article provides that " Parties are not required to apply the provisions of this Convention to drugs which are commonly used in industry for other than medical or scientific purposes, provided that:
 (a) They ensure by appropriate methods of denaturing or by other means that the drugs so used are not liable to be abused or have ill effects (article 3, paragraph 3) and that the harmful substances cannot in practice be recovered; and
 (b) They include in the statistical information (article 20) furnished by them the amount of each drug so used."
 The inclusion of the amount of each drug after use by the Parties in the statistical information, and the submission of estimates of such drugs before use are two different things. The above provision does not imply that the Parties are obliged to include such drugs in their estimates.
 See Commentary on the Single Convention, op. cit., p. 230.
50. Article 49, paragraph 4.
51. Article 1, paragraph 1, sub-paragraph (x).
52. Article 12(1), Article 19, paragraph 1, sub-paragraphs (a)-(c) and Article 9 of the 1972 Protocol. See also Estimated World Requirements of Narcotic Drugs and Estimates of World Production of Opium in 1970, paragraphs 6-32 of the narrative part (U.N. Doc. E/INCB/6) and Estimated World Requirements of Narcotic Drugs and Estimates of World Production of Opium in 1971, paragraphs 20-22 of the narrative part (U.N. E/INCB/10).
53. Form C/S of the Board (5th edition, 1970), footnote (b) to table II, p. 9.
54. Article 1(1)(w).
55. See the Commentary on the Single Convention, op. cit., 232.
56. Article 1(1)(w) and (x); and also Article 19(1)(c).
57. This Article should be read with Article 9 of the 1972 Protocol.

58. Article 21, paragraph 3:

" If the Board finds that the quantity manufactured and imported in any one year exceeds the sum of the quantities specified in paragraph 1, less any deductions required under paragraph 2 of this article, any excess so established and remaining at the end of the year shall, in the following year, be deducted from the quantity to be manufactured or imported and from the total of the estimates as defined in paragraph 2 of article 19."
See also Article 9 of the 1972 Protocol.

59. It is for this reason that decisions on supplementary estimates receive the urgent consideration of the International Narcotics Control Board and in the event of its not being in session, even by telegraphic consultation with its members, if necessary.
60. Article 1, paragraph 4, third sub-paragraph of the Limitation Convention, 1931; see also Article 8, paragraph 6 of the 1953 Protocol.
61. It is to be noted that the same form is used for both "regular" and "supplementary" estimates; in the case of the latter however a government is required to indicate to which heading of the form (form B/S) each of the drugs belongs or state to which the various quantities of drugs mentioned in Article 19, paragraph 1, the new figure relates; see also Estimated World Requirements, 1971, paragraph 3 of the narrative part.
62. See Article 9 of the 1972 Protocol, amending Article 19(5) of the Single Convention.
63. Article 21(b) of the Hague Opium Convention, 1912; Article 10 of the Geneva Agreement, 1925; Articles 22 and 23 of the International Opium Convention, 1925; Article 13(2)(c) and Article 22 of the Limitation Convention, 1931, Article 4(c) and Article 9 of the 1953 Protocol.
64. See also Article 14(3) of the Limitation Convention, 1931, Article 12(2) of the 1953 Protocol and Article 15(1) of the Single Convention.
65. See also Article 29(3) and Article 30(2)(a).
66. Usually three different kinds of forms are used for furnishing statistical information, viz. (a) form C/S for annual statistical information; (b) form A/S for quarterly reports to be made under Article 20; and (c) form R/S for annual statistics on narcotic drugs used for non-medical purposes temporarily authorised under Article 49.
67. See Form C/S (4th edition)- instruction 3, and Form A/S (6th edition) instructions 3 and 5.

68. See further Form C/S- instruction 4; see also Form A/S- instruction 4.
69. Article 1(1)(t).
70. Article 1(1)(n).
71. *infra.*, See *Footnote 74*
72. Manufacture, as used in Article 20(1)(a) does not include the transformation of base drugs into their salts.
73. See further Commentary on the Single Convention, *op. cit.*, p. 247.
74. See form C/S (4th edition, 1970), column C of table I, sections 1,2 and 3.
75. Article 2(9)(b).
76. Article 1(1)(n). In this connection see the Commentary on the Single Convention, according to which " the Board may not under the sub-paragraph under consideration require information on the quantities of crude drugs utilized for the making of refined drugs." p. 249.
77. See the definition of the "concentrate of poppy straw" in Schedule I.
78. See Article 1(1)(r).
79. Form C/S, instruction 3.
80. Article 1, paragraph 2: " For the purpose of this Convention a drug shall be regarded as 'consumed' when it has been supplied to any person or enterprise for retail distribution, medical use or scientific research; and 'consumption' shall be construed accordingly."
81. See the Commenatry on the Single Convention, *op. cit.*, p. 250.
82. Form R/S.
83. Drugs belonging to Group II in the Limitation Convention, 1931, which had a similar legal position to those belonging to Schedule II of the Single Convention, were excluded from consumption statistics.
84. See Form A/S, first column of Parts I and II of the tables (6th edition, November, 1970) which is different from that which is used for annual statistics (Form C/S, 5th edition, November, 1970).

85. The Limitation Convention of 1931 only provided for annual statistics of imports and exports of drugs belonging to Group II. Article 13(2)(c)(i).
86. See Form A/S, instruction 10; see also the Commentary on the Single Convention, op. cit., p. 252. According to the Single Convention, "import" and "export" "mean in their respective connotations the physical transfer of drugs from one state to another state, or from one territory to another territory of the same state", see Article 1(1)(m).
87. See Form A/S, instruction 5.
88. Figures regarding morphine and concentrate of poppy made available in trade should be supplied separately, Form A/S, columns 6 of Part I and Part II of the tables.
89. Form A/S, item II in the first column of Part I of the tables.
90. Form C/S, table II, footnote (e).
91. See Form C/S (5th edition, November, 1970), Notes to Table II, footnotes (b) and (d). Quantities held for "special government purposes" include in particular the requirements for armed forces. The phrase "exceptional circumstances" is meant to cover such catastrophic events as large-scale epidemics and major earthquakes.
92. Statistics in respect of such stocks which will include opium, coca leaves, cannabis, cannabis resin and extracts and tinctures of cannabis (except the stock held for retail outlets or as "special stocks" by government) should be furnished separately in accordance with Article 49, paragraph 3, sub-paragraph (b). See also Form R/S. For provisions of earlier treaties regarding statistical returns on stocks, see Article 22, paragraph 1, sub-paragraph (c) of the International Opium Convention, 1925 and Article 9, paragraph 1, sub-paragraph (b) of the 1953 Protocol.
93. See further Form C/S, table II, footnote (b).
94. Parties to the Single Convention however have to furnish , in addition to the amounts of drugs refined and/or crude actually used, such other data regarding preparations in Schedule III as the Commission may request, as and when necessary. See also Article 18, paragraph 1.
95. Article 20, paragraph 2, sub-paragraph (a); see also Form C/S, p. 4.
96. See also Article 22(2) of the International Opium Convention, 1925 and Article 19(1)(c) of the 1953 Protocol. It appears that the Single Convention has followed the provisions of the previous narcotic treaties in this matter.
97. Article 20(2)(b).

98. Article 20, paragraph 4.
99. See Form C/S, table II, footnote d, and Form A/S, instruction 12; see also Article 1(1)(w).
100. See also Article 20(2)(b).
101. See Form A/S, Part I of the tables, first column, line II, pp. 4-6.
102. Form C/S, table II, column D.
103. See further Commentary on the Single Convention, op. cit., p. 224.
104. Form B/S, footnote 1, General Instruction 11; see also the Commentary on the Single Convention, op. cit., p. 227.
105. For example, heroin, which is an intermediary product in a continuous process of the manufacture of nalorphine, an uncontrolled substance, from morphine. However, if after obtaining the heroin the process of manufacture of nalorphine is interrupted (e.g. in these cases where heroin made by one manufacturer is to be delivered to another manufacturer for transformation into nalorphine) the amount of morphine should be included in the estimate of the amount of that drug to be utilized for the manufacture of other drugs, heroin being such an "other drug", and the amount of heroin should be included in the estimate of this quantity of heroin to be utilized for the manufacture of substances not covered by the Single Convention.
See the Commentary on the Single Convention, op. cit., p. 228.
106. Article 19(1)(c). Article 27(2) and Article 49(3)(b) are however exceptions to the above system; see also Form B/S, column 4.
107. See Commentary on the Limitation Convention, 1931, op. cit., paragraph 52, and L.N. Doc. C.521.M.362.1937.XI.
108. In fact, the Board discussed this matter at its session in Autumn of 1970.
109. See Comments on the Limitation Convention and the 1953 Protocol, supra., pp. 266-269 and p. 567 respectively.
110. supra., pp. 498-501
111. See further Article 9 of the 1972 Protocol, amending Article 19 of the Single Convention.
112. Form C/S. Article 20(1)(f) and paragraph 2 (a).
113. For example, see U.N. Doc. E/INCB/6, Add 1, 2.
114. See further Commentary on the Single Convention, op. cit., p. 236.

115. Article 19, paragraph 5: "Subject to the deductions referred to in paragraph 3 of article 21, an account being taken where appropriate of the provisions of article 21 bis, the estimates shall not be exceeded."
See also Article 9 of the 1972 Protocol.
116. Article 19, paragraph 3.
117. Article 12, paragraph 3.
118. See Article 1(1)(t).
119. See Article 1(1)(n).
120. Concentrate of poppy straw will, however, be taken into account for the purpose of statistical return, if it has been made available in trade.
121. Article 20(1)(b).
122. According to Article 1(1)(b) "cannabis" means " the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated", and therefore, leaves of the cannabis plant when not accompanied by the tops are not "cannabis" and hence not a "drug".
123. Article 2, paragraph 4, see also Article 1 of the 1972 Protocol.
124. Article 21, paragraphs 1 and 2; see also the Commentary on the Single Convention, op. cit., p. 255.
125. Stocks held by retail pharmacists are not considered as "stocks" under the Single Convention, and therefore, returns on them do not have to be furnished.
126. See Official Records, vol II, op. cit., p. 41 and vol. I, p. 137.
127. See especially the view of the British delegate who, in fact, abstained. Official Records, vol. I, op. cit., p. 137.
128. See also Article 10 of the 1972 Protocol.
129. Article 1(1)(w).
130. See Article 12, paragraph 4, Article 13, paragraph 4, Article 19, paragraph 1(d) and Article 20(1)(f); see also Form C/S, notes (b), (c) and (d) to table II, and Form A/S, instruction 12.

CHAPTER XICONTROL OF ILLICIT TRADE AND TRAFFICIN NARCOTIC DRUGSI. Introduction

The Single Convention has made elaborate provisions for the control of trade and traffic in narcotic drugs and substances. Trade in such drugs and substances cannot be eliminated, especially because of medical and scientific needs. The essential uses of these commodities increase their marketability, and consequently, a regular supply to meet the demands for them becomes necessary. As in the case of other commodities subject to governmental control, the supply of narcotic drugs and substances is also illicitly participated in by illegal traffickers. Illicit trafficking in such commodities becomes possible because of over-production / manufacture of the commodity in question, or by diversion of the licit traffic into the illicit traffic, whether in part or in full, or by production/ manufacture without any government authorisation. The control of trade and traffic in narcotic drugs and substances entails two things, viz. (a) control of trade, i.e., prevention of surplus trade in these commodities; and (b) regulation of traffic in them, i.e., transportation both domestically and/or internationally through authorised routes or channels. To put it in another way, trade and traffic in narcotic drugs and substances may be divided into two categories, viz. "licit" and

"illicit". Illicit trade and traffic is the converse of licit trade and traffic but not vice versa. In addition, in so far as the Single Convention is concerned, a licit trade and traffic in narcotic drugs and substances has to fulfil two conditions: (a) that throughout its entire course it is legal and (b) that it has received prior authorisation from the authorities concerned. Therefore, it is from these points of view that the question of licit trade and traffic in narcotic drugs and substances has to be examined.

(a) The General Provisions Concerning Trade in and Distribution of Narcotic Drugs and Substances under the Single Convention

The general provisions relating to trade in and distribution of narcotic drugs and substances are enunciated in Article 30 of the Single Convention. Trade and distribution, in Article 30, stand for both domestic and international trade in and distribution of narcotic drugs and substances.¹ Paragraph 1, sub-paragraph (a) of this Article, in conformity with the provisions of paragraph 1 of Article 29, provides that the " Parties shall require that the trade in and distribution of drugs be under licence ² except where such trade or distribution is carried out by a state enterprise or state enterprises." The licence of a manufacturer should cover the right to buy those substances which he would require for manufacturing the authorised drugs, and should cover their sales. Such a licence, however, should not include the right to trade in those drugs, which he is not authorised to manufacture, nor substances he could need for the

manufacture of such drugs. The authority to grant or to revoke a licence lies with the grantor of such licences.³

However, in Article 30, the Parties undertook the following obligations:

- (i) to control all persons and enterprises carrying on or engaged in the trade in or distribution of drugs;⁴ and
- (ii) to control under licence the establishments and premises in which such trade or distribution may take place.⁵

Obligations at clause (i) covers medical practitioners, dentists and veterinary surgeons, and also scientists using drugs in their experiments. The premises or establishments in which a retail pharmacist or medical practitioner compounds preparations, or on which the distribution of drugs takes place, or where duly authorised persons perform therapeutic or scientific functions,⁶ do not, however, require a licence.⁷

In Article 30, paragraph 2, sub-paragraph (a) the Parties have also undertaken to prevent the accumulation in the possession of traders, distributors, state enterprises or duly authorised persons, of quantities of drugs and poppy straw in excess of those required for the normal conduct of business, having regard to the prevailing market conditions. The provisions of this sub-paragraph have no application to the retail trade in drugs, listed in Schedule II and the preparations listed in Schedule III. The requirements of drugs for the normal conduct of business will vary not only according to the nature and uses of the drugs concerned, but also according to the socio-economic and/or socio-cultural background of the countries.

The phrase "having regard to the prevailing market conditions" has brought some flexibility into the provisions, i.e., these provisions may be applied to different conditions and places. It is however interesting to note that "poppy straw" has been included in this sub-paragraph, despite the fact that traders, distributors, state enterprises and fully authorised persons will hardly hold any poppy straw, and that when not in international trade, it is not covered by the statistical control system of the Single Convention.⁸ This provision has, however, a close relationship with the estimates system of this Convention in that the Parties are required to exercise control over the stocks of drugs held by wholesale traders.⁹ The narcotics regime preceding the Single Convention did not make a provision corresponding to that contained in Article 30, paragraph 2, sub-paragraph (a), although it contained certain provisions concerning the limitation of stocks by wholesalers, and the control of drugs held by retailers.¹⁰

In order to impose restrictions on distribution the Parties also undertook to supply or dispense drugs to individuals only on the authority of prescriptions¹¹ by registered doctors. But the Convention does not require medical prescriptions for drugs in Schedule II¹² for their preparations, or for preparations in Schedule III.¹³ Those drugs which individuals may lawfully obtain, use, dispense or administer in connection with their duly authorised therapeutic functions are also exempt from the requirement of medical prescriptions. The term "individual" however, as used in Article 30, paragraph 2, sub-paragraph 1, clause (i) admits of two interpretations:

(a) "individual" as used in the first sentence of the clause refers to patients who will use drugs, or owners/ possessors of animals for which drugs may be needed, and to persons obtaining drugs on behalf of patients and/or animals; (b) "individual" as used in the second sentence of the clause, refers to persons duly authorised to perform therapeutic functions, viz. medical practitioners, veterinary surgeons and dentists. Scientists, who will use and/or administer drugs on animals, as a function of their scientific research, need not obtain a medical prescription; they will however be under the control regime of Article 34, paragraph (b) of the Single Convention. The provisions of clause (ii) are not mandatory for the Parties to the Convention, although the introduction of a system requiring that prescriptions for drugs in Schedule I should be written on official forms, should maintain uniformity in the maintenance of records of distribution of drugs. The provisions of Article 30, paragraph 3 also do not impose any legal obligation upon the Parties to indicate the international non-proprietary name¹⁴ communicated by the World Health Organization, in respect of written or printed offers of drugs, advertisements in every kind of descriptive literature relating to drugs and used for commercial purposes, interior wrapping or packages containing drugs, and labels under which drugs are offered for sale. Yet, Article 31, paragraph 4, sub-paragraph (b) makes it obligatory for the Parties to indicate the international non-proprietary names of drugs, if any, in import certificates and export authorizations.¹⁵ Therefore, it appears from paragraph 3 that the use of non-proprietary names, if at all, is to be limited to commercial purposes only.

The provisions of Article 30, paragraph 4 concerning the identification of consignments of drugs are, it may be observed, of little practical importance, because such provisions are no deterrent to, and on the contrary, may even be compiled with, by illicit traffickers. Indeed, the earlier narcotics treaties did not contain any such provision. The provisions of Article 30, paragraph 5, are however, in conformity with the estimates system operated by the Single Convention in that, in practice, the Parties are required to show on the labels, whether used on bottles or packages, the exact drug content in them, by weight or percentage, and whether sold on a retail or wholesale basis.¹⁶ This requirement of label information need not, however, "apply to a drug dispensed to an individual on medical prescription,"¹⁷ although in terms of Article 39, a Party, notwithstanding "anything contained in this Convention, shall not be, or be deemed to be, precluded from adopting measures of control more strict or severe than those provided by this Convention." It is worth noting, however, that in so far as the retail trade in drugs belonging to Group II of the Limitation Convention was concerned, the control regime of the Convention was of almost no application to them.¹⁸

It appears, therefore, that the Single Convention did not provide for much restriction on the distribution of drugs to individuals, provided that they obtain them on the strength of appropriate medical prescriptions, nor did it impose much restriction upon trade in and distribution of "preparations".¹⁹ However, besides its restrictive provisions concerning trade in and distribution of narcotic drugs, the Single Convention has introduced some innovations by making "licences" compulsory for establishments and premises used for the trade in drugs.

Although the provisions of Article 30 apply to both kinds of trade, i.e., domestic and international, this Convention, in Article 31, has devised certain "special" provisions relating to international trade in narcotic drugs. It may be observed that the term "exclusive" instead of "special" would have been more appropriate in this context, since Article 31 exclusively deals with international trade in narcotic drugs. However, as Articles 30 and 31 are complementary to each other, it is appropriate to examine Article 31 in the following Section.

(b) The Special Provisions Relating to International
Trade in Narcotic Drugs

Trade in narcotic drugs and substances, whether domestic or international, must have a close relationship with the estimates system under the Single Convention. It is for this reason that the provisions concerning estimates, cultivation, manufacture etc. in this Convention precede those relating to trade. It may not be out of place to mention that the successful effect of the provisions concerning trade will very much depend upon the effective operation of the estimates system under this Convention.

Article 31, paragraph 1 of the Single Convention has introduced certain innovations concerning international trade in that it has made attempts to make the Parties more responsible in their behaviour by providing that they shall not knowingly permit the export of drugs

to any country or territory except:

- "(a) In accordance with the laws and regulations of that country or territory; and
- (b) Within the limits of the total of the estimates for that country or territory, as defined in paragraph 2 of article 19, with the addition of the amounts intended to be re-exported." ²⁰

This provision, however, assumes that the relevant laws of all the importing countries will be known to all the exporting countries, or at least will come to their knowledge prior to the actual exportation of a consignment of drugs, and also that the limits of the estimates for the importing country will also be known to an exporting country. This may certainly be made possible through the effective operation of Article 18, paragraph 1, sub-paragraph (b) and of Article 19, and especially by pursuing the Estimated World Requirements, an effect of the latter Article. Whatever might be the effectiveness of these theoretical provisions,²¹ governments, in practice, may not, however, endanger their relationships by deliberately violating each other's legislation. While the provision of Article 31, paragraph 1, sub-paragraph (a) applies to exports of preparations in Schedule III, that of sub-paragraph (b) does not.²² Paragraph 2 of Article 31 is more concerned with the control of illicit traffic in narcotic drugs than international trade in same. However, the Parties may exercise their discretion as to whether or not to apply more drastic measures of supervision and control in other parts of their territories, than they do in free ports and free zones.

In so far as international trade in narcotic drugs is concerned, the Single Convention made provisions which are similar to those in the previous conventions. International trade under this Convention shall be regulated by licence except where such trade is carried out by a state enterprise or enterprises. This system of licensing will not only limit the number of importers and exporters in a given country, but also enable the government to act as a watchdog of international trade in drugs in that country. This Convention has made detailed provisions concerning international trade in drugs, most of which will be operated by the national authorities according to the circumstances prevailing in their countries. Such provisions include, inter alia, control of all persons and enterprises carrying on or engaged in international trade in narcotic drugs,²³ issuing import certificates and export authorizations in respect of each import and/or export, whether it consists of one or more drugs,²⁴ and even prevention of the passage of a consignment of drugs, by a transit country or territory, if necessary.²⁵ However, prior to examining the provisions of international trade in narcotic drugs, it is appropriate to dwell briefly upon the machinery for import and export designed and made operative by this Convention.

Stage I

Importer applies to his national authority for a non-transferable import authorisation and a certificate²⁶ for each consignment.²⁷

Exporter applies to his national authority for a non-transferable export authorisation for each consignment.²⁸ The application for an export authorisation must be accompanied by the corresponding valid import certificate.²⁹

Stage II

Such authorisation, if granted, shall state the name of the drug, the international non-proprietary name, if any, the quantity to be imported, the names and addresses of the importer and exporter and the period by which the importation must be effected.³⁰

(The Parties shall follow as closely as possible the form of import certificate approved by the Commission on Narcotic Drugs. Article 31, paragraph 5; see also U.N. Doc. E/NR.FORM/Rev.2)

Such authorisation, if granted, shall state the name of the drug, the international proprietary name, if any, the quantity to be exported, the names and addresses of the exporter and the importer, the period by which the exportation must be effected, the number and date of the import certificate and the authority by whom it has been issued.³¹ The issuing authority shall send a copy of the authorisation to the importing country or territory.³²

Stage III

The importing authority shall, after importation has been effected, or when the period fixed for importation has expired, return the export authorisation with an endorsement to that effect (also showing the amount of drug imported) to the exporting authority.³³

In practice, however, a number of governments require that two copies of the export authorisation should accompany the consignment, on one of which the customs authorities at the port of the exporting country confirm the shipment of the drug, and in the event of a smaller quantity being consigned than that permitted by the export authorisation, a note to that effect will be made.³⁴ The customs authorities return this copy to the national authorities concerned with the control of the international trade in narcotic drugs, and the other copy will accompany the consignment.

Some Extra Measures Concerning Export of Drugs

The Single Convention has provided for these prohibitory measures with a view, inter alia, to operating the import-export machinery solely through the import-export authorisation system. It is believed that a strict observance of these measures will automatically bring international trade in drugs within the machinery

devised by the Convention. Paragraphs 8-13 of Article 31 enumerate those prohibitory measures, according to which:

- (i) "Exports of consignments to a post office box, or to a bank to the account of a party other than the party named in the export authorization, shall be prohibited." ³⁵

This appears to be as a "double-safeguard provision" in that the Universal Postal Union Convention, 1964 (Article 28, paragraph 1, sub-paragraph (c) and paragraph 3) and the Universal Postal Convention, 1969 (Article 29, paragraph 1, sub-paragraph (c), paragraph 3 and paragraph 4) have made similar provisions prohibiting international shipments of drugs by mail. International shipments of narcotic drugs by insured letters or insured boxes are also forbidden, except if such boxes are sent for scientific and medical purposes, and the receiving country may admit them only on this condition;³⁶ the despatch of narcotic drugs by postal parcels is also permitted only on the aforesaid condition.³⁷ In view of commercial considerations, shipments of drugs to banks are, however, permitted provided that the account number of the party is indicated on both the import and export authorisations.

- (ii) Export of consignments to a bonded warehouse is prohibited unless the government of the importing country certifies on the corresponding import certificate to this effect, and the export authorisation specifies that the consignment is exported for such a purpose. Each withdrawal from the bonded warehouse shall require a warehouse receipt or a warehouse warrant

from the authorities concerned, and in the event of a foreign destination such a withdrawal shall be treated as a withdrawal for a new export.³⁸

Bonded warehouses are not subject to the licensing system established by the Single Convention, and indeed, storage of drugs in a bonded warehouse is inconsistent with the provisions of Article 30, paragraph 1, sub-paragraph (b) of the Convention, according to which the Parties shall control under licence the establishments and premises in which such trade or distribution may take place. However, storage of drugs in a bonded warehouse may be permitted if the government of the importing country gives its confirmation to this effect on the import certificate stating the name and address of the warehouse, and the exporter must submit to his national authorities this certificate, at the time of making an application for an export authorisation. It is implied that in the absence of any provision to this effect in the Convention, the national authorities before allowing storage in a bonded warehouse, must ensure that such permission will not be prejudicial to the provisions of the Convention and that the warehouse concerned is adequately equipped, i.e., with personnel and safety measures etc. The Single Convention does not preclude private warehouses for the storage of drugs, but such warehouses will have to be authorised by the government concerned for this purpose.

- (iii) "Consignments of drugs entering or leaving the territory of a Party not accompanied by an export authorization shall be detained by the competent authorities." ³⁹

The term "detained" suggests that in such a situation the government concerned is allowed to take interim measures only. The legitimacy of the consignment may be established by furnishing the export authorisation granted by the exporting country. The absence of any provision in the Convention as to the disposal of the "detained drugs" in the case of their ownership not being determined, after exhaustion of all possible means, has led to one possibility, that is, the provision of Article 37 should be brought into operation, in other words, such detained drugs shall be liable to seizure and confiscation. It may also be observed in this connection that once "detained drugs" are seized, they should be subject to the statistical return system of the Convention.⁴⁰

- (iv) "A Party shall not permit any drugs consigned to another country to pass through its territory, whether or not the consignment is removed from the conveyance in which it is carried, unless a copy of the export authorization for such consignment is produced to the competent authorities of such Party." ⁴¹

The above provision pre-supposes that the carrier or the Master/Captain of the ship will carry a copy of the export authorisation, although the Convention has not made any provision to this effect. This provision, it may be observed, has rather become

a matter of academic interest; it should be sufficient if a copy of the export authorisation is attached to the consignment, which is the usual practice.

(v) The government of the transit state or territory shall take all due measures to prevent the diversion of the consignment to a destination other than that named in the export authorisation. Should, however, any diversion be authorised by the government of the transit state or territory, it will be treated as a "new export" and the provisions of paragraph 7(a) and (b) shall apply between the country or territory of transit and the country or territory originally exporting the consignment.⁴²

In the event of a diversion being authorised, the competent authorities in the transit state or territory must issue the necessary export authorisation, a copy of which should be sent to the authorities who had originally issued the import certificate and another copy should be sent with the consignment to the new destination. The copy of the original export authorisation should be retained by the authorities of the country or territory of transit and sent to the government of the original exporter, on endorsement, as required by paragraph 7, sub-paragraphs (a) and (b).⁴³ Indeed, in such cases, the government granting the diversion is under an obligation to

complete the exchange of communications concerning this matter as provided for in Article 31, Paragraph 6 and 7.

- (vi) "No consignment of drugs while in transit, or whilst being stored in a bonded warehouse, may be subjected to any process which would change the nature of the drugs in question. The packing may not be altered without the permission of the competent authorities"^{1/4}

The reason that a consignment of drugs whether in transit or in a bonded warehouse, may not be subjected to any process which would change the nature of the drug in question, is that in the event of such interference being allowed, it would be difficult for the supervising authority to identify the drugs for which import and export authorisations had originally been issued. Moreover, in certain cases, the possibilities of their being transformed into substances which are not covered by the Single Convention (e.g. salts and preparations) may not be ruled out. The packing of a consignment of drugs may, however, be changed only under special circumstances, viz. considerable damage to the existing packing or where diversion of a consignment will necessitate division of a consignment into two or more parts; but in most cases such changes may have to be done by the government of the transit state. A change in the packing of a consignment of drugs may be allowed only under the

strict supervision of the competent authorities of the government concerned, whatever may be the circumstances be warranting such a change. The precautions which a transit-state is required to take do not obviously apply where the consignment in question is transported by aircraft; but if the aircraft lands in any such country or territory, those provisions shall be applied so far as circumstances require.⁴⁵ However, according to Article 29, Paragraph (g) of the Chicago Convention of 1944,⁴⁶ aircrafts engaged in international civil aviation, should carry authenticated documents concerning the cargo they carry, and therefore, the transit state should not find difficulty in observing the provisions of the Single Convention in the case of re-transporting drugs (which amounts to re-export)⁴⁷ even when they are being transported by air.

The provisions in the Single Convention relating to international trade, although not novel in most respects, are very elaborate. Such provisions can primarily be made operative with the co-operation of the parties to this Convention. Also, adequately equipped administrative machinery at national level is indispensable to an effective operation of these provisions. However, the general obligations⁴⁸ undertaken by the Parties in this Convention, in addition to their authority to apply stricter control measures than those required by this

Convention, in addition to their authority to apply stricter control measures than those required by this Convention,⁴⁹ only buttress the provision of Article 31.

As "illicit" trade and traffic often thrive in the course of "licit" trade and traffic in narcotic drugs, it seems to be appropriate to examine in the following Section the provisions concerning action against the illicit traffic in this Convention.

(c) The Provisions Concerning International Action Against the Illicit Traffic in Narcotic Drugs

The narcotic regime of the League devoted the 1936 Convention⁵⁰ entirely to this problem. It was primarily the rigid provisions of this Convention which made it rather unacceptable to many states. Yet the 1936 Convention was considered to be ideal, in terms of the efforts of the League to suppress the illicit traffic in narcotic drugs, and therefore, even though the Single Convention has made more flexible provisions concerning this problem, its authors appreciated that the states which had already adhered to the 1936 Convention would be allowed to continue enjoying the benefits accruing from it. Consequently, the 1936 Convention (with the exception to Article 9)⁵¹ is the only pre U.N. Convention which is not terminated by

the Single Convention as between Parties thereto. However, in so far as the Single Convention is concerned, Article 35 of it, enumerates the provisions for action against the illicit traffic in narcotic drugs. Like the 1936 Convention, all provisions concerning suppression of illicit traffic under this Convention, have ensured due regard to the constitutional, legal and administrative systems of the Parties to the Convention. However, in Article 35, Paragraph (a), the Parties have undertaken to make arrangements at the national level for co-ordination of preventive and repressive action against the illicit traffic, and to this end they may designate an appropriate agency in their respective areas.⁵² The success of this provision, depends to a considerable extent, upon co-ordination at the national level, that is, co-ordination between the national police and excise authorities and the local police and excise authorities. Where such co-ordination exists, it is entirely at the discretion of the Parties to designate an "appropriate agency responsible for such co-ordination." However, an "appropriate agency" does not necessarily imply the creation of a new body for this purpose; on the contrary, in many countries such functions are entrusted to one of the existing government departments. Such an appropriate agency or a government department may or may not be endowed with enforcement functions.⁵³ The phrase, "co-ordination of preventive and repressive action"

does, presumably, admit of various methods of co-ordination depending upon the circumstances prevailing in a given country.

The provisions of paragraphs (b) (c) and (d) of Article 35 have a close relationship with those of Article 4, in which the Parties have undertaken certain obligations to implement the provisions of the Convention as a whole effectively. The meanings of the phrases "assist each other" and "co-operate... with each other" (paragraph (b) and (c)) are similar, and it is difficult to understand why the authors of this Convention have used such synonymous phrases in one Article. However, the expression "international organizations" implies international, inter-governmental and non-governmental organizations,⁵⁴ and the term "competent" therefore implies "the relevant institutions", including the U.N. as a whole, since the Commission on Narcotic Drugs and the International Narcotics Control Board are only subordinate bodies of the Economic and Social Council. If paragraphs (a) and (d) are read together, it will appear that the Parties are required to ensure international co-operation between the institutions are / concerned, i.e., whether they / government departments or separate agencies established in execution of the provisions of Article 35. Paragraph (e) of Article 35 is concerned with the offenders, that is the illicit traffickers, rather than the illicit traffic of narcotic drugs itself.

The provisions of paragraph (e) do not create any legal obligation for the Parties; they are only expected to ensure that where legal papers are transmitted internationally for the purpose of a prosecution, the transmission be effected in an expeditious manner to the bodies designated by the Parties. This does not, however, prejudice the right of a Party to transmit these papers through the diplomatic channel. The implementation of the provisions of paragraphs (f) and (g) is again dependent upon "good faith" of the Contracting Parties. It is entirely for the Contracting Parties to provide whether or not any information relating to illicit drug activity etc. within their borders in addition to that required by Article 18 would be supplied to the Board.

As stated above, the success of international action for the suppression of illicit traffic in narcotic drugs largely depends upon the co-operation of national governments. Such co-operation may take various forms, e.g. establishment of new agencies, and effective administrative functions in relation to the implementation of the Convention. Effective supervision of the machinery of implementation of the Convention is a part of the administrative functions of a government concerning this matter, and the Convention, in Article 54, has provided, inter alia, that all persons who have a managerial or supervisory

positions in a state enterprise " shall have adequate qualifications for the effective and faithful execution of the provisions of such laws and regulations as are enacted in pursuance thereof." ⁵⁵ Although this provision is equally applicable to the prevention of the illicit traffic within a country or territory, it is thought that the illicit traffic in drugs internationally being more financially lucrative, the above provision is even more important in respect of international action against the illicit traffic in drugs across national boundaries.

The Convention has also provided for certain penal provisions in its efforts to suppress the illicit traffic in drugs, and it is necessary to examine these provisions in order to evaluate their deterrent effect.

(d) The Penal Provisions concerning Suppression of
Illicit Traffic in Narcotic Drugs

Article 36 of the Single Convention enumerates the penal provisions designed for punishing any illicit act committed in the name of licit trade and traffic in narcotic drugs. According to paragraph 1(a) of this Article, ⁵⁶ not only certain specified acts, but also, any other acts which in the opinion of a Party are contrary to the provisions of this Convention, shall be

punishable offences when committed intentionally.⁵⁷ The decision as to whether or not an act is contrary to the provisions of the Convention has been entirely left to the judgement of the Parties. Again, it is for the Parties to determine whether or not an offence is a "serious" one, and hence liable to punishment by imprisonment or other penalties of deprivation of liberty. The phrase "deprivation of liberty" implies confinement not only in an institution, but also in other places such as labour or re-education camps.⁵⁸

While paragraph 1 of Article 36 refers to the "constitutional limitations" only, paragraph 2 of the same Article refers to "the constitutional limitations of a Party, its legal system and domestic law".⁵⁹ From the pragmatic point of view, no difference between these two phrases seems to be tenable, since constitutional limitations presumably preclude any consideration of a Party's legal system and domestic law; and in the case of a federal constitution, the units should, in implementing their own domestic laws, be guided by the directives of the constitution and of the central government. In any case, a government is not required to take into account foreign conviction(s) of an alleged offender if its own penal laws do not provide for doing so.

In the light of the above interpretation, the provision of paragraph 2, sub-paragraph (a).clause (i)⁶⁰ that "each of the offences enumerated in paragraph 1, if committed in different

countries, shall be considered as a distinct offence", seems interesting. Such a provision on the one hand admits of the principle of territoriality, and on the other, gives various criminal activities a universal recognition. Yet, the consideration which led to the inclusion of the provisions of paragraphs 1 and 2 of Article 36 found expression in the statement of the Canadian delegate at the Conference for the Adoption of a Single Convention on Narcotic Drugs. The Canadian delegate emphasised that the difference was in fact international and the reasons were: first "the parties should be required to regard as punishable all offences coming under the general heading "traffic". Such offences, whatever form they might take, should automatically be punishable and that was the object of paragraph 1. Secondly, in order to take into account the fact that certain acts, such as attempts to commit, participation in, or financial operation in connexion with, an offence were not considered as offences under certain legal systems or domestic laws, a different wording had been used in paragraph 2. The Canadian government would itself have no difficulty at all in meting out punishment in the case of any of the acts enumerated in that paragraph, but an international convention had to take account of the various legal systems and try, at the same time, to ensure that all types of offence would be punished in all countries. If too imperative a form of words were adopted, certain States would be unable to accede to the Convention. The wording of paragraph 2 did not weaken the Convention but actually strengthened it. There was nothing to oblige a State to punish any of the offences listed in sub-paragraph 2(a)(ii) if its laws did not provide for that,

but if its laws did so provide, then it would be able to punish them."⁶¹ This sub-paragraph, in effect, contains those offences⁶² which had been included in sub-paragraphs (b), (c) and (d) of Article 2 of the 1936 Convention. The contents of this sub-paragraph((a), clause (ii)) cover all kinds of instigation to commit crimes, accessory acts including attempts to commit crimes, and all activities, short of crime stricto sensu although punishable by law. The effectiveness of this sub-paragraph depends to a considerable extent upon the attitude of a country towards a crime.⁶³ The provision of paragraph 2, sub-paragraph (a), clause (iii) that "foreign convictions for such offences shall be taken into account for the purpose of establishing recidivism", bears considerable similarity to that of Article 6. of the 1936 Convention. This provision has, in essence, made attempts to consider certain types of crimes and criminals horizontally. Indeed, in paragraph 2, sub-paragraph (a), clause (iv), it has been provided that serious offences committed either by nationals or by foreigners shall be prosecuted by the Party in whose territory the offence was committed, or by the Party in whose territory the offender is found if extradition is not acceptable in conformity with the law of the Party to which application is made, and if such an offender has not already been prosecuted and judgment given. Although the majority of nations in the international community still believe in the extradition of their subjects, in the event of their committing alleged serious criminal offences, the Parties, in this sub-paragraph, have taken a rather bold step which proved to be unworkable in the 1936 Convention.⁶⁴ Yet, a

recurrence of similar provisions in the subsequent conventions does imply the intention of the Parties to concretise the idea and to give international recognition to certain types of crimes. A successful enforcement of the provisions of paragraph 2, sub-paragraph (a) clause (iv) will mean that where an illicit trafficker in drugs has been extradited, or if extradition be not possible, deported or expelled, the receiving country should still punish him in recognition of the administration of justice. What however is even more important is to employ an efficient police and/or intelligence force in order not to allow a territory to be used as a base of operation for the illicit traffic in other countries.

Although the third draft of paragraph 2, sub-paragraph (b) was drafted in a binding form⁶⁵, the authors of the Single Convention, in appreciation of the difficulties involved in attaining unanimity about the extradition of offenders, let alone a universal recognition of certain crimes, made the provision of paragraph 2, sub-paragraph (b)⁶⁶ recommendatory.⁶⁷ It is for the same reason that the provision includes, inter alia, that the "Party shall have the right to refuse to effect the arrest or grant the extradition in cases where the competent authorities consider that the offence is not sufficiently serious." Article 36, paragraph 2, sub-paragraph (b), however, will have no relevance to those Parties who have notified the Secretary-General that they wish to continue to be bound by the provisions of Article 9 of the 1936 Convention. The 1972 Protocol has modified sub-paragraph (b) of paragraph 2 of Article 36. Yet, whereas clause (i) of paragraph (b) has provided that each of the "offences

enumerated in paragraphs 1 and 2(a) (ii) of this article shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties" and that Parties undertake to "include such offences as extraditable offences in every extradition treaty to be concluded between them", clause (ii) of the same paragraph has provided, inter alia, that if a Party which "makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may at its option⁶⁸ consider this Convention as the legal basis for extradition in respect of the offences enumerated in paragraphs 1 and 2(a)(ii) of this article." Whether or not a Party makes extradition conditional on the existence of a treaty, both the recognition of an extraditable offence and extradition itself shall be subject to the conditions established by the law of the requested party. A Party is required to implement the provisions of Article 36 only in so far as they would be compatible with the principles of its criminal law.⁶⁹ The provisions of Article 36 are also to be transformed into national law by a Party through its appropriate legislative method in order to make them effective under its national penal law.⁷⁰ Incidentally, the French text of paragraph 4 of the Article, practically repeats the substance of paragraph 3.⁷¹ A genuine mistake appears to have occurred in this matter in the compilation of the French text adopted by the Plenary which was prepared by the Drafting Committee for the Plenary's final reading.⁷² It has instead, erroneously incorporated in slightly modified form the French text of the Chilean re-draft of Article 45, paragraph 4 of the Third Draft of the Single Convention,⁷³

which corresponds to Article 36, Paragraph 3 of the final text of the Single Convention.

The provisions of Article 36 largely correspond to those in the 1936 Convention. The effectiveness of penal provisions depends considerably upon the attitudes of nations towards crimes. The repetitive provisions of Article 36 only confirm two things, viz. (a) either the nations are not willing to change their attitudes towards crime including the extradition of criminals, or (b) they are emphasising the necessity of taking action by penal measures, despite apparent differences in their attitudes towards crimes of an international character. Whatever may have been the psychological motive behind these provisions, both international awareness of the dangers of the illicit traffic in drugs and effective co-operation between nations are indispensable to the success of this Convention.

II A Critical Examination of the Provisions of the Single Convention Concerning Control of Trade and Traffic in Narcotic Drugs

After detailing the principal provisions concerning trade and traffic in narcotic drugs, it is necessary to reflect upon their effectiveness in the international movement for the suppression of the illicit traffic in the aforesaid commodities, and this has been done under the following headings:

- (a) The limits of control of domestic trade in and distribution of narcotic drugs.

One of the means of controlling the illicit trade in narcotic

drugs would be to prevent the excessive accumulation of drugs and poppy straw in the hands of traders and distributors; unfortunately the Convention has not prescribed any method for such prevention. In many countries, scientists and medical practitioners (the latter may be categorised under retail distributors) are not under any obligation to report periodically on the quantities of drugs in their possession. In consequence, the possibility of excessive holding of drugs may not be ruled out. In terms of Article 30, Paragraph 2, Sub-paragraph (a) the Parties are required to prevent accumulation in the possession of traders, distributors, state enterprises or duly authorised persons; of, inter alia, poppy straw in excess of that required for the normal conduct of business; therefore, the Convention does not prevent other traders in agriculture products from accumulating poppy straw in excessive amounts. In addition to this, poppy straw not in the possession of drug manufacturers and not in international trade, is not covered by the statistical reports systems of the Single Convention. Sub-paragraph (a) has no application to preparations in Schedule III held by wholesale traders or distributors, nor has it any application to stocks of drugs held by a state enterprise "for special government purposes and to meet exceptional circumstances".⁷⁴

The restrictions upon distribution of drugs, on a retail basis,

the pharmacists have been weakened by the fact that, in certain countries, drugs are distributed on the strength of "oral" prescriptions without verification of the validity of the medical practitioners or of the persons to whom such drugs are distributed. Unless an appropriate method of identification of the parties, i.e., medical practitioner and patient (by whatever means appear to be suitable or appropriate), and unless some uniformity in the pharmacy laws of various countries concerning these procedural means have been achieved, all efforts towards control of trade in drugs will meet with only partial success. To this should be added the practice of physicians in many countries of acquiring drugs for their personal use without any appropriate prescription for themselves,⁷⁵ and indeed the incidence of drug addiction is quite high among physicians in many countries. It may also be pointed out that the provisions of Article 30, paragraph 2, sub-paragraph (b), clause (ii) concerning the issue of prescriptions for drugs in Schedule I on official forms, by the competent governmental authorities or by authorised associations, should be made legally binding, instead of leaving it to the discretion and good faith of the Parties.

The non-obligatory provision of Article 30, paragraph 5 which allows a pharmacist to supply drugs to an individual on medical prescriptions without showing the exact drug content on the label, is fraught with danger, especially in those cases where a drug has been or will be supplied on the strength of an oral prescription. As no appropriate records of such prescriptions are maintained by pharmacists in many countries, illicit distribution may take place even within the

precincts of a pharmacy.⁷⁶ Illicit trade and distribution in narcotic drugs are much easier to conduct than licit trade and distribution in the said commodity. It may therefore be pertinent to observe that the Single Convention should have made some more obligatory provisions especially in respect of procedural matters, and also where such provisions would not encroach upon the sovereignty of the Parties.

(b) The Limits of International Action Against the
Illicit Trade in Narcotic Drugs

The term "limits" is synonymous with "narrowness". Narrowness of international action in this field may be caused either by limiting the scope of its operation, or by excluding the items over which international action cannot be exercised. Unfortunately, both these causes have contributed to the limitation of international action against the illicit traffic in narcotic drugs.

The scope of operation of the Single Convention has been limited by Article 31, paragraph 15, according to which the Parties are under no obligation to observe those provisions of control of the transit of international drug consignments through their territories, which are incompatible with their obligations under other treaties limiting their rights of control over goods, including drugs in transit. Although paragraphs 10, 11 and 12 of the same Article have been devised with a view, inter alia, to close this gap, it is observed that the increasing inclination of nations to guard their sovereignty jealously only

introduces doubt about the overriding effects of those provisions, unless occasions warranting the withdrawal of the right of innocent passage arise. This situation has further been aggravated by the provisions of paragraph 14, according to which the "provisions of paragraphs 11 to 13 relating to the passage of drugs through the territory of a Party do not apply where the consignment in question is transported by aircraft which does not land in the country or territory of transit." Such a provision does not discourage the illicit traffickers from dropping narcotics at different places according to their convenience. In addition to this, the same paragraph provides that if "the aircraft lands in any such country or territory, those provisions (i.e., the provisions of paragraphs 11-13) shall be applied so far as circumstances require."⁷⁷ Paragraphs 11, 12 and 13 chiefly enunciate rules concerning the transportation from one country to another of drugs which require appropriate export authorisation and all necessary measures concerning legal routing and prevention of attempts to subject a drug to any process which would change its original nature. Such provisions are equally applicable to all countries, transit or otherwise. Yet, it is difficult to understand why the above provisions have not been made obligatory for transit states when an aircraft carrying consignments of drugs is passing through their territories. One of the far-reaching effects is to exonerate a transit state from the legal responsibility to take every preventive measure restraining a carrier from altering the packing of the consignment of drugs, with a view to diverting them into illicit traffic.

The usual practice in the commercial world, of extending extra privileges to free zones and free ports, has affected this Convention also, in that very little or no supervision is exercised over shipments of drugs from foreign countries into free zones and free ports, and consequently, illicit trade and traffic are stimulated. Mercantile practice has been so deeply rooted that the provisions of Article 39⁷⁸ which is a covering Article, may turn out to be too flexible to change the attitude of nations in this regard.

In so far as exclusion of certain items from the scope of international action is concerned, it may be mentioned that this Convention does not provide for import and export authorisations in the case of shipments of preparations in Schedule III. Although in practice some governments insist on such authorisations, absence of any regulatory provisions in this regard precludes the possibility of bringing any government to task in the event of its failure to observe the required formalities. Moreover, the practice of a formality by some does not necessarily create a norm.

Secondly, the general drawback of the estimates system has contributed to the ineffectiveness of the provisions for international action against illicit trade and traffic in narcotic drugs. According to the Convention, the statistical data on seized drugs released for licit use and the amount of drugs taken out of "special stocks" for civilian use, are required to be furnished to the Board by governments by 30 June following the year to which they relate.⁷⁹ Therefore, in making their estimates of drug requirements, in accordance with Article 31, paragraph 1, sub-paragraph (b), the Parties will not know

what deductions are required by Article 21, paragraph 2.⁸⁰ Indeed, considerable difficulties may also arise from the application of the provision of Article 31, paragraph 1, sub-paragraph (b), according to which "the amounts intended to be re-exported" should be added. It will very often be extremely difficult for an exporting country to know what amounts the importing country or territory intends to re-export. It would therefore be very helpful if the authorities of the importing country or territory indicated in the import certificates, the quantities of drugs and substances they intend to re-export.⁸¹

Thirdly, although Article 31, paragraph 8 prohibits exports of consignments to a post office box or to a bank to the account of a Party other than the Party named in the export authorisation, such prohibition applies only to international and not to domestic trade in narcotic drugs.

The scope of international trade being wider than that of domestic trade, the possibilities of unlicensed international trade are much greater and more varied than in respect of domestic trade. Commercial intercourse between different countries necessarily demands effective co-operation between national authorities not only for flourishing trade, but also for prohibiting the incidence of illicit trade. International commercial law does not imply a uniform commercial law for the whole world; what it does imply is an attempt to create a climate of the most favourable legal conditions.

It is not by law only that limitations of international trade in narcotic drugs can be rectified; national co-operation with the United Nations in its goal to suppress the illicit trade in the said commodity is equally essential.

(c) The Limits of International Action Against
the Illicit Traffic in Narcotic Drugs

In view of the growing incidence of the illicit traffic in narcotic drugs, illicit traffic has become as common as licit traffic in them. The Single Convention has chiefly provided some regulatory measures for licit trade and traffic only, on the assumption that perhaps the control of licit trade and traffic in narcotic drugs would automatically suppress the illicit trade and traffic in them. Consequently, some apparent gaps have been left in the Convention, which may encourage the illicit traffic in narcotic drugs.

First, the control arrangements recommended by this Convention in respect of the storage of drugs in bonded warehouses, may turn out to be a pious hope owing to the financial and technical (i.e., appropriate equipment etc.) implications of such arrangements. Many governments may not be willing or able to give priority to such programmes owing to other pressing needs in their economies, and indeed, in many cases it will prove difficult to justify such additional expenses. In addition to this, the system of transferring title to drugs stored in bonded warehouses by means of endorsements only (that is, endorsement of the warehouse warrant) can hardly be reconciled with the rules of the narcotic regime governing trade in drugs.⁸²

Secondly, although Article 31, paragraph 11 prohibits transportation of a consignment of drugs from one country to another unless a copy of the export authorisation for such consignment is produced to the competent authorities of such party, in practice, however, it

is understood that a different procedure is followed. " It is considered sufficient if a copy of the export authorisation is enclosed in or attached to the consignment, like other commercial papers required for customs clearance",⁸³ and in fact, no particular person as "competent authorities of such party" is made available for the necessary examination of the export authorisation on the spot. Despite the fact that this practice has been followed since the International Opium Convention of 1925,⁸⁴ it is feared that it may encourage the traffickers to exhibit false export authorisations, or pose difficulties for national authorities in tracing the diverted consignments owing to the absence of scrutiny at various check-posts by a competent person.

Thirdly, in so far as preventive action against the illicit traffic in narcotic drugs is concerned, the plans of the Single Convention are neither more ambitious nor effective than those of the previous drug conventions. A Party is under no legal obligation to implement any of the provisions of Article 35, if it is incompatible with its constitutional, legal and/or administrative systems.⁸⁵ It is not so much a question of compatibility with the aforesaid national systems, as it is of making such systems adequate and efficient enough to implement the provisions of the Convention. Lack of an adequate and effective police system and of co-ordination among various related organs of a government contribute to the flourishing of the illicit traffic in narcotic drugs. In the circumstances it is feared that the pledges taken by the Parties in Article 35 will turn out to be pious vows only, which have further been weakened by their unpreparedness

to take the action designed by the Convention for the suppression of the illicit traffic in narcotic drugs if, it is not compatible with their constitutional, legal and administrative systems.

Fourthly, in extension of the above argument, it may also be observed that the prospects of international co-operation of an organised character from such governments are not very encouraging. The scope of their co-operation has further been limited by the provisions of Article 35, paragraph (c), according to which the Parties are required to "co-operate closely with each other and with the competent international organisations of which they are ⁸⁶members with a view to maintaining a co-ordinated campaign against the illicit traffic."

Although membership of one international organisation, it is believed, brings a member into relationship with other international organisations,⁸⁷ whether or not a member of the latter organisation(s), such a deliberate attempt to limit their responsibility to co-operate, where unlimited co-operation is essential, indicates the possibilities of non-co-operation.

(d) The Limits of Penal Measures

The penal measures envisaged in this Convention are limited by the difficulties which are involved in the establishment of general international rules concerning national penal laws. The definitions of crimes differ in different national penal systems; and the grounds on which countries assume jurisdiction in criminal matters are also

not uniform. The penal provisions of this Convention, which are primarily based on the 1936 Convention, are also subject to the constitutional limitations of the Parties. Indeed, the self-execution of any of the provisions of Article 36 is an exception, rather than a rule.⁸⁸

In addition to the above, the drafting of Article 36 has to a considerable extent limited the scope of the penal provisions. Only those criminal activities which are "committed internationally" fall within the purview of Article 36. Consequently, criminal acts, resultant of negligence, will not be deemed to be punishable offences under Article 36. Article 36(1)(a)⁸⁹ provides, inter alia, that "serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty", but the seriousness of an offence may be interpreted and viewed differently by different national legal systems,⁹⁰ and consequently, the severity of punishment will also be different. Indeed, attitudes towards punishment were revealed to differ so radically that the Conference finally decided to use the phrase "adequate punishment" instead of "severe punishment".⁹¹ The scope of penal measures in this Convention has further been limited by the use of very similar phrases like "conspiracy to commit" and "attempts to commit" any of such offences,⁹² which clouded the prospects of launching an effective fight against the illicit traffic in narcotic drugs.⁹³

The traditional conflict among nations concerning the principle of extradition of criminal offenders has endangered the effectiveness of the provisions of the penal measures in the Convention. Indeed,

Article 36, paragraph 2, sub-paragraph (a), clause (iv) provides, inter alia, that serious offences of illicit traffic committed abroad should be prosecuted " if extradition is not acceptable in conformity with the law of the Party to which application is made." ⁹⁴ This provision does not appear to include " cases in which application is made to a non-party, or in which the country to which application is made refuses to accept the extradition of the offender although extradition is acceptable in conformity with its law, or finally those cases in which the Party in whose territory the offender is found does not, for whatever reasons, offer other countries the extradition of the offender, e.g. because the offender is its national and it does not, on constitutional or other grounds, extradite its own citizens." ⁹⁵ This situation has further been worsened by Article 14, paragraph 2, sub-paragraph (b), clause (iv) of the 1972 Protocol ⁹⁶ which has provided, inter alia, that "notwithstanding sub-paragraphs (b)(i), (ii) and (iii) of this paragraph, the Party shall have the right to refuse to grant the extradition in cases where the competent authorities consider that the offence is not sufficiently serious." ⁹⁷ Article 36 omits the case of Parties which are willing to be unilaterally bound by the principle of extradition, although not on a treaty-basis, but with or without any condition of reciprocity. This provision does not cover the extradition to non-parties. ⁹⁸

Article 36 has also no application to illicit traffic in leaves of the cannabis plant when accompanied by the tops, because the leaves are not considered to be drugs. ⁹⁹

(c) Provisions concerning Settlement of Disputes

According to Article 48 of the Single Convention, if there should arise between two or more Parties a dispute relating to the interpretation or application of the Convention, they shall "consult together with a view to the settlement of the dispute by negotiation, investigation, mediation, conciliation, arbitration", and shall have recourse to regional bodies, judicial process, or other peaceful means of their own choice. Should however they fail to settle any such dispute by any of the aforesaid means, it shall be referred to the International Court of Justice.

In so far as the drug conventions concluded during the League period were concerned, the usual provision was that if there should have arisen between the Contracting Parties a dispute of any kind relating to the interpretation or application of these conventions, and if such a dispute could not be satisfactorily settled by diplomacy, it was to be settled in accordance with any applicable agreements in force between the Parties providing for the settlement of international disputes. In case, however, there was no such agreement in force between the Parties, the dispute was to be referred to arbitration or judicial settlement. In the absence of agreement on the choice of another tribunal, the dispute was, at the request of any one of the Parties, to be referred to the Permanent Court of International Justice, if all the Parties to the dispute were Parties to the Protocol of December 16, 1920 relating to the Statute of that Court, and if any of the Parties to the dispute was not a Party to the Protocol of December 16, 1920, to an arbitral tribunal constituted in accordance with the Hague Convention of

October 18, 1907, for the Pacific Settlement of International Disputes.¹⁰⁰ It may also be stated that in making this provision, the absolute good faith and good behaviour of the nations had been presumed because many nations, whether or not members of the universal organisation, were reluctant to refer disputes to arbitration or judicial settlement in compliance with the usual provisions of settlement of disputes in such multilateral treaties.

The striking difference between the provisions of Article 48 of the Single Convention and the corresponding provisions of the Limitation Convention (Article 25)¹⁰¹ and the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, 1936 (Article 17)¹⁰² is that whereas the former requires the Parties to make attempts to settle a dispute by means of negotiation, interpretation, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their choice, prior to their going to the International Court of Justice, the latter only required the Parties to make attempts to settle a dispute by diplomacy, before its being referred to the Permanent Court of International Justice. It became rather a fashion to make a provision in the multilateral treaties for submission of a dispute concerning interpretation and application of such treaties to the World Court. The Permanent Court's observation in the case concerning the Electricity Company of Sofia and Bulgaria that "... the multiplicity of agreements concluded accepting the compulsory jurisdiction is evidence that the Contracting Parties intended to open up new ways of access to the Court rather than to close old ways or to

allow them to cancel each other out with the ultimate result that no jurisdiction would remain....",¹⁰³ would be justified only when more and more parties had willingly entered into special agreements accepting the compulsory jurisdiction of the Court.

However, the provisions of Article 48 of the Single Convention do not oblige the Contracting Parties to accept the compulsory jurisdiction of the International Court of Justice. Moreover, the Contracting Parties are free to make reservations pursuant to Article 50, paragraph 2. It would be pertinent to mention that in the last analysis it is the common will of the parties which is the basis of the Court's jurisdiction.¹⁰⁴ The justification for not making any provision for acceptance of the Compulsory jurisdiction of the International Court of Justice may be found in the prevailing scepticism of nations about the compulsory adjudication of disputes by means of the International Court of Justice. On the other hand, Advisory Opinions of the Court, owing to psychological reasons have, in certain cases, produced results as effective as the decisions rendered by the Court under its Contentious jurisdiction.¹⁰⁵

So far, no case of breach of treaty obligations concerning drug matters has been referred to international arbitration or judicial settlement, nor has any dispute arisen as to the interpretation of the Convention. This may be due to the fact that licit trade in drugs and the regulations thereto do not present a great problem, nor do the Signatories to the Conventions show any unwillingness to be bound by treaty obligations as far as the licit trade in drugs is concerned.

(f) Comments

The problems of the illicit trade and illicit traffic in drugs are as old as the problems of licit trade and licit traffic in them. The indispensibility of drugs for medical and scientific reasons justifies trade in them. It is also for these reasons that production and manufacture of drugs and/or narcotic substances cannot be banned. The nature of the commodity has contributed to the incidence of the illicit traffic in it. Consequently, stringent measures have been found necessary to operate the "licit" trade in drugs. On the other hand, measures should not be so stringent as to restrict or to prohibit the licit trade. Again, there are certain areas, where the carrying of drugs, not for trade but for emergency medical reasons, as in the first aid kits of ships and aircrafts, is essential.¹⁰⁶ In the face of these problems it often becomes difficult to devise a balanced formula which will preserve the licit trade in drugs, and, at the same time, suppress the illicit trade and traffic in them.

From the above study it appears that the problem of the illicit trade and traffic in narcotic drugs cannot be controlled without the co-operation of the national governments. "Co-operation" in this context will have two facets, viz. positive and negative. While positive co-operation stands for direct action to further the programme of the United Nations, negative co-operation stands for abstention from doing something, which will retard the progress of the United Nations in its plan to suppress the illicit traffic in narcotic drugs. In so far

as the suppression of the illicit trade and traffic in narcotic drugs is concerned, the Single Convention attempts to secure direct co-operation from its Parties. Whatever the nature of that co-operation, a successful co-operation between the U.N. authorities and the parties to an international convention pre-supposes the existence of the following: (a) ability of the parties concerned to co-operate; (b) willingness of the parties to co-operate; and (c) the belief of the parties in the United Nations. The ability of a party to co-operate again depends upon various factors viz. existence of adequate and effective administrative and legislative machinery, understanding of the importance of the matter, and other conditions which promote its ability to co-operate, e.g. educational enlightenment. The willingness of a party to co-operate pre-supposes its preparedness to surrender its national sovereignty to a certain degree, instead of jealously guarding it.¹⁰⁷ In fact, the attitude of the parties to the Single Convention as expressed in Article 36 (penal provisions)¹⁰⁸ is merely indicative of their pretence at co-operation with the U.N. programme, in respect of the extradition of drug offenders. Lastly, the belief of a party in the United Nations will emanate from its "international awareness". In reality, the last two conditions, i.e., the willingness of a party to co-operate and its belief in the United Nations are interrelated.

Although limited in scope, the programme envisaged in the Single Convention to combat the illicit trade and traffic in narcotic drugs, is both curative and preventive by nature. Although an international programme, it is operative only among the Parties to

the Convention generally. It is horizontal by nature, but vertical in operation. This programme is not totally condemnable, yet it does not deserve unreserved appreciation. On the other hand, in view of the prevailing attitudes of the nations towards crime and criminal punishment, any stringent programme in this regard will meet with failure. In order to transform the fundamental rules of the international narcotics regime into rules of customary international law, which will help fight the illicit trade and traffic in narcotic drugs, it is necessary to create the conditions of "international awareness".

CHAPTER XIFOOTNOTES

1. See also Official Records, vol. I, op. cit., pp. 71-72.
2. This licence should expressly state whether it authorises the licensee to engage in wholesale or retail trade or both.
3. *supra.*, pp. 664-665
4. Article 30(1)(b)(i).
The term "persons" includes all physical persons engaged in this trade and the technical personnel, office workers and manual workers. The term "enterprise" includes the buildings or parts of building (premises) and their appurtenances and equipment used in the trade; it includes "state enterprises" also. See further the Commentary on the Single Convention, op. cit., p. 331.
5. Article 30(1)(b)(ii).
6. Article 30(1)(c).
7. Medical practitioners and scientists have been exempted from the requirement of a licence for their premises only in order to enable them to carry out their experiments; they are otherwise subject to the control regime of the Single Convention. See also Article 4(c) and Article 31, paragraphs 4-15.
8. See Article 20(1), sub-paragraphs (b) and (d).
9. See further Article 19(1)(c) and paragraph 5 (as amended by the 1972 Protocol); and Article 21, paragraph 1, especially sub-paragraph (d).
10. Article 5, paragraph 2, first sub-paragraph, clause (c), and second sub-paragraph, Article 6, paragraph 1, sub-paragraph (d) of the Single Convention, and Article 5 of the International Opium Convention, 1925.
11. See also Article 6(2)(c) and Article 19 of the International Opium Convention, 1925.
12. Article 30(6); see also Article 13 (2)(a) of the Limitation Convention of 1931 and Article 1(4) of the 1948 Protocol.
13. Article 2, paragraphs 3 and 4; see also Article 1 of the 1972 Protocol amending paragraph 4 of Article 2 of the Single Convention.

14. The chief idea behind non-proprietary names is to prevent a state from acquiring proprietary rights in a drug. The Single Convention does not prescribe any procedure for establishing non-proprietary names by the World Health Organization. It is, however, difficult to oblige states to accept non-proprietary names for various drugs owing to differences in languages, and consequently, this may cause confusion. See further Resolution of the Executive Board of the World Health Organization, EB 15.R.7 (January, 1955) and Official Records of the W.H.O., No. 60, Annex 3; EB 37. R9 (January, 1966) and Resolutions of the World Health Assembly WHA 3.11 (May 1950) and of the Executive Board EB.12.R.24 (May 1953).
15. Article 19 of the Limitation Convention, 1931 provided that the label under which a drug had been controlled should at the time of its sale have indicated the name of the drug as provided for in the national legislation; see also Article 1, paragraph 4 of the 1948 Protocol.
16. This paragraph does not apply to the retail trade in drugs in Schedule II, and their preparations, and therefore not to any preparation (or retail trade) in Schedule III. The provisions of this paragraph relate only to drugs in Schedule I (whether or not listed in Schedule IV) and to their preparations other than those in Schedule III; see also Commentary on the Single Convention, op. cit., p. 345.
17. Article 30(5) of the Single Convention.
18. Article 13(2) of the Limitation Convention, 1931; Article 1(4) of the 1948 Protocol. Article 19 of the Limitation Convention applied however to the retail trade in drugs belonging to Group II. Article 19 of the Limitation Convention:
"The High Contracting Parties will require that the labels under which any of the drugs or preparations containing those drugs, are offered for sale, shall show the percentage of the drugs. These labels shall also indicate the name of the drugs as provided for in the national legislation."
19. see e.g. Article 30 (1)(b)(ii).
20. The drug conventions prior to the Single Convention did not impose any such obligation upon Parties, except when a directive to this effect had been issued by the Permanent Central Board under Article 14, paragraph 2 of the Limitation Convention, 1931.
21. *supra.*, pp. 689-694
22. Article 2(4), (see also Article 1 of the 1972 Protocol) and Article 31(16).

23. Article 31(3)(b).
24. Article 31(4)(a).
25. Article 31(12).
26. An import authorisation is a document stating the amount of drugs which an individual person, a business or state enterprise may import; an import certificate is a document certifying to the government of an exporting country or territory that an individual, a business or state enterprise is authorised to import a given quantity of drugs. Where importation in consignment is authorised, the authorisation can take the place of a certificate also. Where importation in more than one consignment is allowed, the government concerned may issue to the importer the required number of copies of the import authorisations involved.
L.N.Doc. C.760.M.260.1924.XI.vol. II, p. 254, and vol. I, p. 291; see also U.N. Doc. E/NR.FORM/Rev.2.
27. Such certificates are to be obtained not only by state enterprises and licensed traders for trading, but also by non-licensed scientists for research purposes.
28. Whereas an import authorisation indicates the sum total of drugs an importer is allowed to import, an export authorisation indicates the amount of drugs an exporter is allowed to export by each consignment. Only one exporter can export drugs against an import authorisation, conversely all the import certificates relating to the same import authorisation may name as exporter only the one designated in the import authorisation.
29. Article 31(5).
30. Article 31(4)(b).
31. Article 31(b) and (c).
32. Article 31(6).
33. Article 31(7) (a) and (b).
34. Article 31 (7)(c).
35. Article 31(8).
The drug conventions preceding the Single Convention did not contain a corresponding provision, although the League of Nations Model Code recommended such a provision in respect of international shipments, see part II, chapter III, paragraph 21, second sub-paragraph.
36. Article 5(1)(b) of the Agreement Concerning Insured Letters and Boxes (Vienna), 1964; see also Article 5(1) (b) of the Insured Letters and Boxes Agreement (Tokyo), 1969.

37. Article 24(a) of the Agreement Concerning Postal Parcels (Vienna), 1964; see also Article 19(a)(ii) of the Postal Parcels Agreement (Tokyo), 1969.
38. Article 31(9).
39. Article 31(10).
40. Article 20(1)(e). The drug conventions preceding the Single Convention did not contain a provision corresponding to paragraph 10. However, see Article 15(1) of the International Opium Convention, 1925.
41. Article 31 (11) ; see also Article 15(1) of the International Opium Convention, 1925.
42. Article 31(12); see also Article 15 (2) of the International Opium Convention, 1925. .
43. See also Commentary on the Single Convention, op. cit., p. 380.
44. Article 31(13); see also Article 17 of the International Opium Convention, 1925.
45. Article 31(14); see also Article 15(3) of the International Opium Convention, 1925.
46. U.N.Treaty Series, vol. 15, p. 316.
47. *supra.*, pp. 722-724
48. Article 4.
49. Article 39.
50. The title of this Convention was: The Convention for the Suppression of the Illicit Traffic in Dangerous Drugs. League of Nations Treaty Series, vol. CXCVIII, p. 299.
51. The provisions of Article 9 may still continue to be in force if a Party has made a notification to this effect to the Secretary-General of the U.N. See Article 44(2).
52. See also Article 11(1) and paragraph 2, sub-paragraphs (a) and (b) of the 1936 Convention, according to which such functions had been entrusted to a "central office".
According to Article 17 of the Single Convention, however, the Parties " shall maintain a special administration for the purpose of applying the provisions of this Convention."
53. It is for this reason that the Plenipotentiary Conference preferred to term "appropriate agency" to "enforcement agency", see further Official Records, vol. II, op. cit., p. 41.

54. *infra.*, Chapter XII
55. Article 34(a).
56. See also Article 14 of the 1972 Protocol.
57. See also Article 2(a) of the 1936 Convention.
58. See Commentary on the Single Convention, *op. cit.*, p. 429.
59. See also Article 14 of the 1972 Protocol.
60. See also Article 4 of the 1936 Convention.
61. Official Records, vol. II, *op. cit.*, pp. 236-237.
62. International participation in , conspiracy to commit and attempts to commit any of such offences, and preparatory acts and financial operations in connexion with the offences referred to in this Article.
63. *infra.*, pp. 746-748.
64. See Articles 7 and 8 of the 1936 Convention; see also *supra.*, pp. 297-300
65. Article 45(3) of the Third Draft, Official Records, vol. II, *op. cit.*, p. 17.
66. See also Article 9 of the 1936 Convention.
67. See also the opinions of the representatives of India, Mexico and U.K. who criticised the recommendatory nature of this paragraph, Official Records, vol. II, *op. cit.*, pp. 242-243; see also vol. I, p. 146.
68. Italics added.
69. Article 36(3).
70. Article 36(4); see also Article 15 of the 1936 Convention.
71. Paragraph 3: "Aucune disposition du présent article ne portera atteinte aux dispositions du droit pénal d'une Partie en matière de juridiction."

Paragraph 4: "Les dispositions du présent article seront limitées en matière de compétence par la législation pénale de chacune des Parties."
72. See U.N. Doc. E/CONF.34/21, Add 2 and Corr 1, Records (French), vol. II, p. 333 and vol. I, pp. 215 and 219; see also Commentary on the Single Convention, *op. cit.*, p. 440.

73. The French text of the Chilean re-draft reads: "4. Toutes les dispositions du present article seront considerees comme limitees, en matiere de competence, par la legislation penale de chacune des Parties."
E/CONF.34/L.13, Records (French) , vol. II, p. 54.
74. Such stocks are known as "special stocks"; see Article 1(1)(w).
75. This applies also to dentists and veterinary surgeons.
76. For a corresponding provision, see Article 19 of the Limitation Convention, 1931. Not only preparations corresponding to those in Schedule III of the Single Convention, but also drugs and preparations dispensed to individuals on medical prescriptions were subject to the requirement of label information.
77. Italics added.
78. Article 39 : " Notwithstanding anything contained in this Convention, a Party shall not be, or deemed to be , precluded from adopting measures of control more strict or severe than those provided by this Convention and in particular from requiring that preparations in Schedules III or drugs in Schedule II be subject to all or such of the measures of control applicable to drugs in Schedule I as in its opinion is necessary or desirable for the protection of the public health or welfare."
79. Article 20(2)(a).
80. See also the Commentary on the Single Convention, op. cit., pp. 350-351.
81. op. cit., p. 351.
82. See Article 31 (9); see also Commentary on the Single Convention, op. cit., p. 373.
83. op. cit., p. 376.
84. No Party to the International Opium Convention of 1925 or the Single Convention had raised any objection to this practice.
85. See also Article 13 of the 1972 Protocol.
In this connection see especially the statement made by the Mexican delegate at the Conference for the Adoption of this Convention, Official Records, vol. I, p. 147.
86. Italics added.

87. For a discussion on the relationship between the U.N. and the countries that are not members of it, see generally H. Kelsen, The Law of the United Nations, Stevens, 1951, pp. 106-108; see also Goodrich, Hambro and Simmons, Charter of the United Nations: Commentary and Documents, op. cit., 3rd edition, pp. 59-60.
88. See Article 36, paragraph 4.
89. See also Article 14 of the 1972 Protocol.
90. See the opinion of the Soviet delegate, Official Records, vol. II, op. cit., p. 238. See also the opinion of the Danish delegate at the Conference, who stated, inter alia, that "Penal provisions were necessitated by the need to punish offenders; the listing of offences was of secondary importance. The obligation on the Parties to punish breaches of the Convention was the paramount consideration and should be subordinated to domestic law. If the domestic law was at fault, it should be amended." Official Records, vol. II, op. cit., p. 238. This view was also supported by the Yugoslave delegate, *ibid.*,
91. See Official Records, vol. II, op. cit., p. 239. Article 2 of the 1936 Convention, however, uses the phrase "severely punishing."
92. Article 36(2)(a)(ii).
93. See also Official Records, vol. I, op. cit., p. 123.
94. See also Articles 7 and 8 of the 1936 Convention.
95. Commentary on the Single Convention, op. cit., p. 436.
96. See also Article 36(2)(b) of the Single Convention.
97. Italics added.
98. Commentary on the Single Convention, op. cit., p. 437.
99. Article 1(1)(b); see also *supra.*,
100. See Article 25 of the Limitation Convention of 1931, and Article 17 of the 1936 Convention.
101. Article 25 of the Limitation Convention
 "If there should arise between the High Contracting Parties a dispute of any kind relating to interpretation or application of the present Convention and if such dispute cannot be satisfactorily settled by diplomacy, it shall be settled in accordance with any applicable agreements in force between the Parties providing for the settlement of international disputes.

101. In case there is no such agreement in force between the Parties, the dispute shall be referred to arbitration or judicial settlement. In the absence of agreement on the choice of another tribunal the dispute shall, at the request of any one of the Parties, be referred to the Permanent Court of International Justice, if all the Parties to the dispute are Parties to the Protocol of December 16th, 1920, relating to the Statute of the Court, and if any of the Parties to the dispute is not a Party to the Protocol of December 16th, 1920, to an arbitral tribunal constituted in accordance with the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes."
102. Article 17 of the 1936 Convention
- " If there should arise between the High Contracting Parties a dispute of any kind relating to the interpretation or application of the present Convention, and if such dispute cannot be satisfactorily settled by diplomacy, it shall be settled in accordance with any applicable agreements in force between the Parties providing for the settlement of international disputes.
- In case there is no such agreement in force between the Parties, the dispute shall be referred to arbitration or judicial settlement. In the absence of agreement on the choice of another tribunal, the dispute shall, at the request of any one of the Parties, be referred to the Permanent Court of International Justice, if all the Parties to the dispute are Parties to the Protocol of December 16th, 1920, relating to the Statute of that Court, and if any of the Parties to the dispute is not a Party to the Protocol of December 16th, 1920, to an arbitral tribunal constituted in accordance with the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes."
103. P.C.I.J., Series A/B, No. 76. See also the Mavrommatis Palestine Concessions case, P.C.I.J., Series A. No. 2, pp. 29-33.
104. The case concerning the Status of Eastern Carelia, P.C.I.J., Series B, No. 5, 1923; see also the Minority Schools in Upper Silesia case, in which the Court stated, inter alia, that " The Court's jurisdiction depends upon the will of the Parties", P.C.I.J., A.15, p. 22 and the Monetary Gold Removed from Rome in 1943 case, in which the International Court of Justice stated, inter alia, that " the Court can only exercise jurisdiction over a State with its consent." I.C.J. Reports, 1954, p. 32.
105. See further T.M. Franck and Bert. B. Lockwood, Jr., " Preliminary Thoughts Towards an International Convention on Terrorism", 68 American Journal of International Law, 1974, pp. 69-90, at p. 89; see also C.H.M. Waldock, " Decline of the Optional Clause," 32 British Year Book of International Law, 1955-56, pp. 244-287.

106. See Article 32. Such cases have to be dealt with on a separate footing. The usual provisions of import-export authorisations or permits and licences which are necessary for premises and establishments, will have no application in these cases. Carrying of drugs in first aid kits of ships or aircrafts under proper control should not, however, pose a great problem. The principal safeguards concerning this matter which should be taken by the country of registration, have been mentioned in a report of the Commission on Narcotic Drugs, 14th session (1953), paras 368-369 (E/3254); see also ECOSOC Resolution 770 E(XXX) and its annex.
107. This implies the necessity of narrowing down the area of the so-called domestic jurisdiction of a sovereign authority. The less a state guards its sovereignty, the greater will be the chance of international co-operation. See further the Decision of the Permanent Court of International Justice in the case concerning the Nationality Decrees in Tunis and Morocco, P.C.I.J., B.4, 1923 in which the Court emphasised that "The question whether a certain matter is or is not solely within the jurisdiction of a state is an essentially relative question; it depends upon the development of international relations.", op. cit., p. 24; see further R. Higgins, The Development of International Law through the Political Organs of the United Nations, Oxford University Press, 1963, pp. 76-77, and V. Rajan, The United Nations and Domestic Jurisdiction, Oxford University Press, 1961.
108. See also Article 14 of the 1972 Protocol.